Supreme Court, U.S.
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No. (1)

In The
Supreme Court of the United States

DAVID A. ROBERTS,

Petitioner,

v.

MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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May 19, 2008

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QUESTIONS PRESENTED FOR REVIEW

After a child support obligation was established by a Maine state court in 1981, the Maine initiating court asked a Maryland court to act under URESA, and the Maryland responding court entered judgments in 1983, 1984, and 2001 that each became final without appeal.

(1) Under what circumstances is the judgment of a URESA responding state court given Full Faith and Credit, when that judgment prospectively modifies the prior judgment of the initiating state court?

After a wrongful lawsuit by Maine Department of Health and Human Services ("Maine DHS") to collect from Roberts on the 1981 Maine judgment was dismissed with prejudice by the Maryland responding court in 2001, Maine DHS engaged in predatory and unlawful collection practices that led Roberts to file a civil rights action under 42 U.S.C. § 1983 against Maine DHS, *et. al.*

(2) Under what circumstances may a District Court properly dismiss with prejudice such a 42 U.S.C. § 1983 complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6)?

(3) Does the *Rooker-Feldman* doctrine protect only federal court Defendants, or both Plaintiffs and Defendants, from a federal District Court issuing an order that would have the effect of overturning a final state court judgment?

PARTIES TO THE PROCEEDINGS

The sole Petitioner is David A. Roberts, a natural person.

The eight Respondents are as follows:

Maine Department of Health & Human Services ("Maine DHS")

John Nicholas, individually and in his official capacity as Commissioner of Maine Department of Health and Human Services

Peter Walsh, individually and in his official capacity as Commissioner of Maine Department of Health and Human Services

Kevin W. Concannon, individually and in his official capacity as Commissioner (former) of Maine Department of Health and Human Services

Mark O. Van Valkenburgh, individually and in his official capacity as agent for Maine Department of Health and Human Services

Ingrid B. Lapointe, individually and in her official capacity as agent for the Maine Department of Health and Human Services

Anne-marie Johnson, individually and in her official capacity as agent for the Maine Department of Health and Human Services

Loretta Dumond, individually and in her official capacity as agent for Maine Department of Health and Human Services

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David A. Roberts is a natural person.

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INTRODUCTORY PRAYER

Petitioner respectfully requests that a writ of *certiorari* be granted to review the February 19, 2008 order denying rehearing of the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered on January 9, 2008, which summarily affirmed the District Court dismissal of Roberts' case with prejudice for failure to state a claim under Fed. R. Civ. P. 12(b)(6), by memorandum opinion and order dated January 26, 2007 and the District Court denial of reconsideration by memorandum opinion and order dated April 23, 2007.

OPINIONS BELOW

This Petition stems from the second of two dismissals of Petitioner's Complaint, a civil rights action under 42 U.S.C. § 1983 against Maine DHS, *et. al.* The first dismissal in 2004, under the *Rooker-Feldman* doctrine, was reversed by the Fourth Circuit and remanded to the District Court in 2006, subsequent to this Court's decision in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*[1] In 2007 the second dismissal, for failure to state a claim under Fed. R. Civ. P. 12(b)(6), was affirmed by the Fourth Circuit, leading to this Petition.

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[1] See *Lance v. Dennis*, 546 U.S. 459, 126 S.Ct. 1198, 163 L.Ed.2d 1059 (2006) (citing *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005)). *See also D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482-86, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983) and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16, 44 S.Ct. 149, 68 L.Ed. 362 (1923).

First appeal – reversed and remanded by the Fourth Circuit

The order of the United States District Court for the District of Maryland, Northern Division – Baltimore dated December 17, 2004, dismissing Petitioner's Complaint under the *Rooker-Feldman* doctrine, is unpublished. (App. 40a). The District Court's memorandum opinion is unpublished. (App. 42a).

The order of the United States District Court for the District of Maryland, Northern Division – Baltimore dated January 19, 2005, denying Petitioner's Motion for Reconsideration, is unpublished. (App. 38a).

The per curiam opinion of the United States Court of Appeals for the Fourth Circuit dated May 24, 2006, reversing and remanding the District Court dismissal of Petitioner's Complaint under the *Rooker-Feldman* doctrine, is unpublished, but unofficially reported at 182 Fed. Appx. 201 (4th Cir. 2006). (App. 34a). The Fourth Circuit judgment dated May 24, 2006, reversing the District Court is unpublished. (App. 32a).

Second appeal leading to this Petition

The order of the United States District Court for the District of Maryland, Northern Division – Baltimore dated January 26, 2007, dismissing Petitioner's Complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6), is unpublished. (App. 18a). The District Court's memorandum opinion dated

January 26, 2007 is unpublished, but unofficially reported at 2007 WL 5145353 (D. Md. Jan. 26, 2007). (App. 20a).

The order of the United States District Court for the District of Maryland, Northern Division – Baltimore dated April 20, 2007, denying Petitioner's Motion for Reconsideration, is unpublished. (App. 8a). The District Court memorandum opinion is unpublished, but unofficially reported at 2007 WL 5145354 (D. Md. April 20, 2007). (App. 10a).

The per curiam opinion of the United States Court of Appeals for the Fourth Circuit dated January 9, 2008, summarily affirming the District Court dismissal of Petitioner's Complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6), is unpublished, but unofficially reported at 2008 WL 110916 (4th Cir. Jan. 9, 2008). (App. 3a). The Fourth Circuit judgment dated January 9, 2008 affirming the District Court is unpublished. (App. 6a).

The Order of the United States Court of Appeals for the Fourth Circuit dated February 19, 2008, denying Petitioner's Request for Rehearing is unpublished (App. 1a).

JURISDICTION

The judgment of the Court of Appeals was entered on January 9, 2008. A timely Request for Rehearing was denied on February 19, 2008. This Petition is timely filed according to Supreme Court Rules 13.1 and 13.3. The Court derives jurisdiction from 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The below-referenced Constitutional and Statutory Provisions are set forth in Appendix I, p. 81a.

United States Constitution

The Full Faith and Credit clause of United States Constitution, Article IV, § 1.

Federal Statutes

State and Territorial statutes and judicial proceedings; full faith and credit, 28 U.S.C. § 1738.

The Full Faith and Credit of Child Support Orders Act, 28 U.S.C. § 1738B.

STATE LAWS ADOPTED FROM THE UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT (URESA), AS AMENDED IN 1968

Maryland Statute

Md. FAMILY LAW Code Ann. §§ 10-328 (1984)

Maine Statute

19 M.R.S.A. § 409 (1981).

STATEMENT OF THE CASE

A. Background Facts and Issues

The civil rights case of Petitioner, David A. Roberts ("Roberts"), which arises under 42 U.S.C. § 1983, stems from the predatory and unlawful actions by Maine Department of Health and Human Services ("Maine DHS") to collect money from Roberts, despite that Roberts had paid in full all child support due under an original 1981 Maine judgment, a 1983 Maryland judgment, a 1984 Maryland judgment, and that a Maine DHS collection lawsuit against Roberts in a Maryland state court had been dismissed with prejudice in 2001.

The legal issue presented here – whether the District Court properly dismissed Petitioner's 42 U.S.C. § 1983 claim pursuant to Fed. R. Civ. P. 12(b)(6) – turns upon a definitive answer as to the proper and lawful interpretation of Section 31 of the Uniform Reciprocal Enforcement of Support Act (URESA). Section 31 contains uniform statutory language that has been adopted by all 50 states. Interpretation of Section 31 of URESA is an issue that has been litigated in many states throughout the nation, with different outcomes. In some cases, including this one, application of an erroneous statutory construction of URESA Section 31 to the facts results in an outcome that eviscerates the Full Faith and Credit required by the United States Constitution, Article IV, § 1, and federal law, including the Full Faith and Credit of Child Support Orders Act, 28 U.S.C. § 1738B.

Part of the problem giving rise to this issue is the continual change and evolution to which child support law has been subjected over the past four decades. It continues in a flux. As a result, child support law is a patch-work of state and federal statutes and case law that many learned judges and attorneys do not fully understand. Incomplete understanding by the bench and bar in a dynamic environment of constant change is responsible for producing contradictory – and sometimes chaotic – results, leaving millions of people unable to bring the order to their lives that can only come from a predictable framework of law, consistent with common sense.

A seamless majesty of law consistent with common sense brings stability to the lives of citizens, and society, and is the highest calling of the legal profession. Such a noble concept of law can only be achieved by reconciling apparently contradictory and chaotic tendencies in law, as they arise in individual cases. This objective was lost when the District Court did not properly reconcile the complex interplay of facts and law and dismissed Roberts' case.

This case illuminates the need for decisive guidance from this Court to the state and federal courts about how to harmonize:

> Section 31 of the Uniform Reciprocal Enforcement of Support Act (URESA), as codified in state statutes;
>
> the legal effect of the 1981 Maine judgment that initially established the child support obligation of Petitioner;

the legal effect of the 1983, 1984, and 2001 final judgments of the Maryland responding court;

the legal effect upon these three judgments of the Full Faith and Credit clause of United States Constitution, Article IV, clause 1, and the Full Faith and Credit of Child Support Orders Act, 28 USC § 1738B;

the conduct of Maine DHS, *et. al.*, that denies full faith and credit to those three judgments and led to Petitioner's civil rights Complaint under 42 U.S.C. § 1983 against Maine DHS, *et. al.*; and

the District Court's dismissal of Petitioner's well-pled Complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6), on a legal conclusion that denies full faith and credit to the 1983, 1984, and 2001 final judgments of the Maryland responding court.

Thus, it is imperative that this Petition be granted for this Court to give much needed direction in an area of law that has a direct, personal impact upon not only Petitioner, but also several hundred thousand other citizens, each and every year.

B. The Scope of the Problems Faced by Child Support Obligors Like Roberts

According to a study by the American Coalition for Fathers and Children[2] in November 2000, in 7.5% of cases child support agencies commit the type of error that happened in Roberts' case, namely "failure of the child support agency to correctly update an order with a downward or upward modification or later court ruling."

At about the same time, the federal Office of Child Support Enforcement *FY 2000 Preliminary Data Report*[3] stated the nationwide child support caseload was 17.4 million cases. Applying the 7.5% error rate to the nationwide caseload of 17.4 million cases reveals 1.3 million cases nationwide in FY 2000 in which the child support agency failed to correctly update an order with a downward or upward modification or later court ruling.

C. Roberts' Case is the Quintessence of Many Other Cases

The essence of the Maine DHS position, that they may ignore with impunity the legal effect of three final

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[2] The American Coalition for Fathers and Children is a nationally recognized Washington D.C. based, non-profit advocacy organization dedicated to family law education and reform.

[3] U.S. Department of Health and Human Services, *The Office of Child Support Enforcement Annual Statistical Report for Fiscal Years 1999 and 2000* (visited May 17, 2008) <http://www.acf.hhs.gov/programs/cse/pubs/2002/reports/datareport/>

judgments of a Maryland court, is not just an academic exercise. It has a huge personal impact on the lives of real people, like Roberts, who deeply resent the profound injustice manifest in the blatantly lawless bureaucratic money-grab by state agencies all over America like Maine's DHS. A close look at Roberts' case illuminates the real suffering Maine DHS causes in the name of the law, even as they operate on a policy that ignores elemental precepts of American law such as full faith and credit, merger, bar estoppel, and *res judicata*. When state bureaucracies across the nation like Maine DHS do to others as Maine DHS has done to Roberts - simply refuse to obey the law to collect money that is not rightfully owed – they cause serious financial problems for hundreds of thousands, and possibly millions, of otherwise law-abiding American citizens. And the state agency position is delivered with an "in your face", "we do as we please" arrogance that insults the intelligence of the people they coerce who are simply overpowered by the bureaucratic machine. Might does not make right.

It is important to note that URESA collection cases such as Roberts' are almost always litigated in the state courts, because the architecture of URESA and its successors is designed that way. Appeals of these issues through the state courts to this Court will occur only rarely, if ever. So the federal courts are unlikely to ever address these problems, unless cases like Roberts' civil rights action are allowed to progress through the federal appellate process to this Court. The Roberts case offers this Court a unique opportunity to address these important issues.

In light of the number of support cases outlined above, the scope of the problem is enormous. And it is having a deeply destructive, corrosive effect on the faith average Americans have in their justice system. Americans deserve better from those who administer their system of justice. Granting Roberts' petition gives this Court an opportunity to address the systemic injustice being foisted on hundreds of thousands of Americans by state bureaucrats who otherwise conduct themselves as personally and collectively above the law.

D. An Overview of what Roberts has Suffered from Maine DHS

On January 22, 1981, Roberts was divorced from his former wife, Rosemary H. Petke ("Petke") by judicial decree ("the 1981 Maine divorce judgment") from a Maine state court, Aroostook District Court, District No. n, Division of Southern Aroostook, Maine. This 1981 Maine divorce judgment incorporated the terms of a Property Settlement Agreement ("Agreement") entered into by Roberts and Petke. The Agreement specified terms and conditions of property division, child support, child custody, child visitation, and alimony. The Agreement specified Roberts would pay Petke a total of $360.00 per month as child support. Thus the 1981 Maine divorce judgment also operated as "the 1981 Maine support order."

At the time of entry of the 1981 Maine support order on January 22, 1981, Roberts was a resident of the State of Maine. During the recession of 1981, Roberts closed his machine tool business in Maine and

relocated his residence to his former home state of Maryland in an effort to find work.

On or about February 23, 1981 Petke applied for government financial assistance by requesting, among other things, aid for dependent children though the Maine Department of Health and Human Services ("Maine DHS"). Upon information and belief, Petke assigned her rights to child support to Maine DHS; thereafter, Maine DHS (acting as Petke's subrogee) handled all child support issues with Roberts, while Petke herself continued to handle matters other than child support with Roberts.

On or about March 24, 1982, Maine DHS initiated an action in a Maryland state court seeking modification of child support pursuant to the then-governing interstate child support collection and enforcement regime, the Uniform Reciprocal Enforcement of Support Act (URESA), Title 19 Maine Revised Statutes Ann., §331, *et seq*.

The Aroostook County Superior Court Clerk's Office in Maine (per Julia P. Nelson, Special Deputy Clerk of the Supreme Judicial and Superior Courts, Houlton, Maine), forwarded to Maryland a certified copy of a Petition dated March 17, 1982, filed in that Maine court by Maine DHS against Roberts, along with testimony taken in the State of Maine, a certification from the State of Maine, and a copy of the version of URESA Maine had adopted.

As URESA then existed in Maine, the filing of these documents by the Maine court in the Maryland court was required in order to give the responding state,

Maryland, authority to modify the 1981 Maine order of support. In so doing, the Maine state court relinquished modification and enforcement jurisdiction over Roberts' child support obligations to the Commonwealth of Maryland, pursuant to the authority of URESA, also adopted by Maryland.

Six months prior to the URESA filing, Petke asked the Maine state court for modification of the 1981 Maine divorce judgment as it related to visitation and other items not related to child support, resulting in Maine state court orders regarding matters other than child support on July 8, 1982 and May 17, 1984.

Under these circumstances, Roberts (living in Maryland) was under the jurisdiction of the Maine court as to matters other than child support, and at the same time, under the jurisdiction of the Maryland court on the URESA action Maine DHS had filed in Maryland. So, acting at the behest of its sister court in Aroostook, Maine, the Circuit Court for Wicomico County, Maryland, accepted the Maine's interstate petition for filing on April 14, 1982. The Maryland court then proceeded to exercise subject matter jurisdiction over child support issues and personal jurisdiction over both Maine DHS and Roberts to undertake review and modification of the controlling Maine child support order, exactly as Maine DHS had asked the Maryland court to do.

On January 7, 1983, the Circuit Court for Wicomico County, Maryland, acted upon the Maine DHS petition and entered a judgment prospectively modifying Roberts' child support obligation by suspending payments until Roberts was out of college. Neither

Maine DHS nor Roberts appealed this 1983 Maryland judgment, and it became final ("the 1983 Maryland judgment").

Back in Maine, on February 9, 1984, Petke asked the Maine state court for further modification of terms of the Maine visitation order by filing a Petition in the Maine state court.

On April 12, 1984, Maine DHS again initiated a URESA request in the Maryland state court, asking the Circuit Court for Wicomico County, Maryland to modify Roberts' child support obligation, so while Maine DHS asked the Maryland court to modify the Maine child support order, the Maine court still exercised personal jurisdiction over Roberts regarding visitation.

On April 27, 1984 the Circuit Court for Wicomico County, Maryland again entered its 1984 Maryland judgment based upon the request of Maine DHS, prospectively setting Roberts' child support at $180 per month (up from the $0 amount in the 1983 Maryland judgment, but down from the $360.00 per month in the 1981 Maine support judgment). Neither Maine DHS nor Roberts appealed this 1984 Maryland judgment, and it became final ("the 1984 Maryland judgment").

Over the years following the 1984 Maryland judgment as Roberts' three children grew up, Roberts remained a resident of Maryland and fully complied with the 1984 Maryland judgment, by paying in full all of the child support owed in accordance with 1984 Maryland judgment. Roberts paid all child support obligations under the 1984 Maryland judgment

through the Wicomico County Family Support Division in Maryland, who forwarded the payments to Maine DHS, as specified in the 1984 final judgment, until Roberts' youngest child reached the age 18 on November 12, 1996.

Between the final 1984 judgment of the Maryland court and 1996, the Maryland state court continued to exercise subject matter jurisdiction over Roberts' child support obligation and personal jurisdiction over Roberts, through various court actions in Maryland, including motion practice and entry of Earnings Withholding Orders. To Roberts' knowledge, information and belief, no court has ever entered a judgment against him for past due child or spousal support.

Upon information and belief, on March 31, 1997 Maine DHS caused a federal tax lien to be placed upon Roberts' federal tax refund. The lien was filed with the Clerk of the Circuit Court for Dorchester, Maryland as Maine DHS asserted its position, under the color of state law, that the interstate URESA actions Maine DHS initiated and pursued through the Maryland courts to final judgments in 1983 and 1984 had no effect upon the 1981 Maine support order.

On November 20, 2000 Maine DHS, under the color of state law, filed in the Maryland state court a Uniform Interstate Family Support Act ("UIFSA") action to register, enforce, and collect alleged arrearages from Roberts under the 1981 Maine support order. As filed, Maine DHS, misrepresented the action as an "Initial Request" and did not inform the Maryland court of the prior procedural history and

posture of the case, or even mention the final Maryland judgments from 1983 and 1984.

Having been the initiating party to the Maryland court judgments in 1983 and 1984, Maine DHS knew, or should have known in November 2000, that it could not act under the authority of the 1981 Maine divorce judgment. At the very least, Maine DHS should have disclosed to the Maryland court the existence of the 1983 and 1984 Maryland court judgments obtained through Maine DHS's own petitions.

In support of the November 2000 UIFSA petition, Defendant Valkenburgh executed an affidavit under penalty of perjury that Roberts owed $25,790 in past due child support, which Valkenburgh knew or should have known was false and misleading, because Maine DHS had received all of Roberts' child support payments due under the 1983 and 1984 Maryland judgments. And Roberts' evidence would show he actually had paid Petke more than she was due under the terms of the 1981 Maine support judgment.

Because of Maine DHS' bad faith claim Roberts owed child support arrearage under the 1981 divorce judgment Maine insisted was still operational (after 20 years), on April 18, 2001, the Commonwealth's Attorney for Wicomico County, Maryland filed a Motion to Dismiss the Maine DHS UIFSA action with prejudice, claiming that Maryland had an order with the parties and Maryland had closed its case.

On May 14, 2001 the Maine DHS complaint was dismissed WITH PREJUDICE (emphasis included in original), per Order of the Circuit Court for Wicomico

County, Maryland. Neither Maine DHS nor Roberts appealed this 2001 order of the Circuit Court for Wicomico County, Maryland, and it became final ("the 2001 Maryland judgment").

Despite the 2001 Maryland judgment that dismissed Maine DHS' collection case against Roberts with prejudice, Maine DHS began groundless collection actions. In so doing, Maine DHS violated, and continues to violate Roberts' civil rights under the Fourth Amendment, the Full Faith and Credit Clause of the United States Constitution, the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution, and the requirements of the Full Faith and Credit of Child Support Orders Act, 28 USC § 1738B, by continued collection efforts, the filing of the federal tax lien, the filing of a fraudulent "Initial Request" for child support and continued harassment, including threats of prosecution under the federal non-support act, 18 U.S.C. § 228.

Maine DHS has reported false, adverse information about Roberts' alleged arrears to various national credit bureaus. Maine DHS' unconscionable actions and conscious disregard for the civil rights of Roberts, his family, and others similarly situated, are pursued by Maine DHS to fraudulently obtain U. S. federal financial subsidies and incentives offered to the States for the collection of legitimate child support owed.

In an attempt to collect money from Roberts for a child support obligation he had already paid in full in accordance with the 1981 Maine support judgment and the 1983 and 1984 Maryland judgments, Maine DHS

acted with malice toward Roberts and contempt of the Maryland state court's final judgments. Maine DHS has continued collection actions against Roberts while utterly ignoring the *res judicata* legal effect of the 1983 and 1984 final Maryland court judgments. Maine DHS has caused Roberts irreparable harm and significant actual damages by submitting false and adverse credit information to various credit reporting agencies; by reporting and requesting a federal tax lien on Roberts' federal income taxes with the U.S. Internal Revenue Service; by invading his privacy, in the form of a barrage of dunning letters with written threats of arrest and imprisonment, harassment and attempted intimidation on a repeated basis.

In an effort to put a stop to the repeated, systematic, and wrongful deprivation of Robert's civil rights by Maine DHS acting under color of law, on July 1, 2004, Roberts filed his Complaint for damages and injunctive relief under 42 U.S.C. § 1983 in federal District Court in Baltimore, Maryland.

Despite that Roberts' complaint properly invoked the jurisdiction of the District Court under *28 U.S.C. §1331* and *42 U.S.C. §1983*, on December 17, 2004 (over 5 months from the date Roberts filed the Complaint on July 1, 2004) the Honorable William D. Quarles, Jr., District Judge, ordered Roberts' entire complaint dismissed on the sole ground the District Court lacked subject matter jurisdiction under the *Rooker-Feldman* doctrine. (App. 40a).

After Roberts' Motion to Reconsider was denied by the District Court, Roberts appealed *pro se* to the United States Court of Appeals for the Fourth Circuit

from the order and judgment of dismissal by the District Court (Roberts' first appeal to the Fourth Circuit). (App. 38a). On May 24, 2006 the Fourth Circuit decided Roberts' first appeal with a written opinion and judgment that vacated the judgment of the District Court and remanded the case to the District Court for further proceedings. (App. 32a).

After the mandate of the Fourth Circuit issued on June 19, 2006 and Roberts' case was docketed back in the District Court, Maine DHS renewed their Motion to Dismiss restating the remaining substance of their first Motion to Dismiss back in 2004. Almost 2 ½ years from the date Roberts filed the Complaint on July 1, 2004, on January 26, 2007 the Honorable Judge William D. Quarles, Jr., District Judge, again ordered Roberts' entire complaint dismissed with prejudice for failure to state a claim under Fed. R. Civ. P. 12(b)(6) (a ground that was in Maine DHS' 2004 Motion to Dismiss). (App. 18a). And Maine DHS has yet to file an Answer to Roberts' Complaint.

After Roberts' Motion to Reconsider was denied by the District Court, on May 18, 2007 Roberts filed Notice of his second appeal to the United States Court of Appeals for the Fourth Circuit from the order and judgment of the District Court dismissing his case.

On January 9, 2008 the Fourth Circuit decided Roberts' second appeal with a written opinion and judgment that sustained the judgment of the District Court without explanation. (App. 3a).

REASONS FOR GRANTING THE PETITION

Roberts respectfully submits there are compelling reasons why this Court should grant his petition for writ of certiorari and review the Fourth Circuit's decision.

The Fourth Circuit's decision sustained the District Court's dismissal with prejudice that hinged upon important questions of constitutional and federal law that has not been, but should be settled by the Supreme Court.

A. The Uniform Reciprocal Enforcement of Support Act

The Uniform Reciprocal Enforcement of Support Act (URESA) was enacted to facilitate interstate enforcement of child support obligations. URESA or similar legislation was adopted in all of the United States. It was approved by the National Conference of Commissioners on Uniform State Laws in September 1950, and was adopted by Maryland on June 1, 1951 and by Maine on August 8, 1953.[4] The Act stated that its purposes were to improve, by reciprocal legislation, the enforcement of the duties of support, and to make uniform the law with respect thereto. The goal of improved interstate enforcement of child support obligations had been accomplished, but the law with respect thereto is anything but uniform. The lack of

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[4] URESA was superseded by the enactment of UIFSA in Maryland on January 1, 1997 and in Maine on July 1, 1995. At all times relevant to this case, URESA was in effect and applicable.

uniformity is due, in part, to the fact that state courts have taken different views on how to properly construe various critical sections of the Act. Germane to this case is Section 31 of the Act.

A URESA proceeding is commenced when a person to whom a duty of support is owed (a support obligee) files a petition in a court of the initiating state, the state in which the obligee resides. After determining that a duty of support may exist, the court in the initiating state forwards the petition to a court of the responding state, the state where the parent allegedly owing a duty of support resides (the support obligor). Having obtained subject matter jurisdiction, the court of the responding state must obtain personal jurisdiction over the support obligor, hold a hearing, and determine whether a duty of support exists, and if so, the extent of that duty going forward in time.

Section 31 of URESA states that "a support order made by a court of this state [i.e. the responding state] pursuant to this Act does not nullify and is not nullified by a support order made by a court of substantially similar Act or any other law, regardless of priority or issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by a the court of this state."

B. State URESA Statutes vs. The Full Faith and Credit Clause of the U.S. Constitution

In construing section 31 of the Act, several states have taken the view that a court acting as a responding court in a URESA proceeding may enter a child support order different from that previously ordered in the initiating state. However, some of those states have also found that section 31 of the Act provides that the initiating state is not bound by the terms of a support order of a responding state when the responding state considers a subsequent petition for modification, or calculates arrearages due under the original divorce decree. To reach this conclusion, courts have reasoned that support orders entered pursuant to URESA are not judgments entitled to Full Faith and Credit. The Fourth Circuit Court of Appeals affirmed the District Court decision in this case that dismissing Petitioner's 42 U.S.C. § 1983 action, citing a case construing the Act as just described herein.

Petitioner submits that an interpretation of the Act allowing a court to ignore essential precepts of law pertaining to full faith and credit, *res judicata*, and merger is incorrect, improper, and unconstitutional. As stated in *San Remo Hotel, L.P. v. City and County of San Francisco, Cal.*, "[t]here is simply 'no principle of law or equity which sanctions the rejection by a federal court of the salutary principle of *res judicata*.'" 545 U.S. 323, 401; 125 S.Ct. 2491; 162 L.Ed.2d 315 (2005) (quoting *Heiser v. Woodruff*, 327 U.S. 726, 733, 66 S.Ct. 853, 90 L.Ed. 970 (1946)). The lower courts' decisions in this case upholding an unconstitutional interpretation of the Act results in a manifest injustice for a multitude of Americans subject to this law.

Article IV, § 1, of the United States Constitution demands that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." 28 U.S.C. § 1738, provides that "judicial proceedings ... shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State ...." This statute has long been understood to encompass the doctrines of *res judicata*, or "claim preclusion," and collateral estoppel, or "issue preclusion." See *Allen v. McCurry*, 449 U.S. 90, 94-96; 101 S.Ct. 411; 66 L.Ed.2d 308 (1980). The general rule implemented by the full faith and credit statute is that parties should not be permitted to relitigate issues that have been resolved by courts of competent jurisdiction. *San Remo Hotel, L.P.*, 545 U.S. 323.

In the instant case, after Roberts' child support obligation was created in the 1981 Maine support judgment, Roberts' ex-wife assigned her interest in Roberts' child support obligation under the 1981 Maine support judgment to Maine DHS. Maine DHS then initiated an action in Maine under URESA, followed URESA requirements to transfer jurisdiction to the Maryland courts, actively participated as a party in the Maryland court (by proxy, through their counterparts from the Maryland child support agency), were represented by counsel who litigated the child support issue with Roberts present, accepted the 1983 judgment of the Maryland court that suspended Roberts' child support payments until he finished

college, and let the 1983 Maryland judgment become final without any appeal.

And it happened the same way again in 1984. Maine DHS initiated an action in Maine under URESA, followed URESA requirements to transfer jurisdiction to the Maryland courts, actively participated as a party in the Maryland court (by proxy, through their counterparts from the Maryland child support agency), were represented by counsel who litigated the child support issue with Roberts present, accepted the 1984 judgment of the Maryland court that Roberts' prospective child support payments be $180.00 per month, and let the 1984 Maryland judgment become final without any appeal.

Petitioner fully complied with the 1984 Maryland judgment and paid all child support in full as he had been ordered to do under the 1981 Maine judgment, and the 1983 Maryland judgment. When Maine sought to wrongfully enforce the 1981 Maine judgment in bad faith the 2001 Maryland judgment dismissed Maine DHS' collection action with prejudice.

In 2007, when Maine DHS moved for dismissal of Roberts' Complaint, the District Court, Honorable William D. Quarles presiding, erroneously dismissed Petitioner's complaint for failure to state a claim under Civil Procedure Rule 12(b)(6). In so doing the District Court gave no *res judicata* effect, as a matter of law, to the 1983, 1984 and 2001 Maryland judgment. In support of the dismissal, the court relied on *Weidner v. Weidner*, 553 A.2d 263 (Md. App. 1989). The *Weidner* case is fully analyzed below in subsection D. However, before addressing *Weidner* and the problems it

presents, it is important to analyze a case that is factually on point with the instant case and was decided close in time to Roberts' divorce and his subsequent support proceedings.

C. *Sullivan v. Sullivan* – Harmonizing URESA law with the Full Faith and Credit Clause

In 1981, an Illinois appellate court properly addressed the distinction between a collateral enforcement action for a support order and an action for prospective modification of support. *Sullivan v. Sullivan,* 98 Ill.App.3d 928, 424 N.E.2d 957 (1981). In *Sullivan,* the parties were divorced in New York in 1968. Pursuant to the separation agreement entered into, the husband was to pay $655 per month for child support. Subsequent to the entry of the divorce decree, the wife moved to Illinois and the husband then moved to Ohio. In 1978, an Illinois court increased the father's support obligation to $1,000 per month. Apparently, both parties were present at that hearing in Illinois. In an attempt to collect on the increased support order, the wife then commenced proceedings under URESA in Illinois. The complaint was then forwarded to Ohio, the responding state. However, when the hearing on that complaint took place in Ohio, both the husband and wife were present. At the conclusion of that hearing, the Ohio URESA court lowered the husband's obligation to $600 per month.

In 1980, the wife filed a petition for a rule to show cause in Illinois, which alleged arrearages under the 1978 Illinois order. Nevertheless, after a hearing, the trial court ruled that the responding URESA court, Ohio, had jurisdiction to prospectively modify the prior

Illinois support order. On appeal, that ruling was confirmed. In affirming that judgment the Illinois appellate court stated:

> We find no error in the circuit court's decision to recognize the Ohio order over the previous Illinois order. Following the 1978 Illinois order, Mary properly entered that order in Ohio one month later by means of an URESA complaint. *With both parties present,* the Ohio court concurred in the finding that Daryl was obligated to pay support but it fixed a different amount of prospective support from that set by the initiating court. The law is generally settled that, under URESA, a responding court may enter a new decree for a different amount of prospective child support from that of the initiating court. [Citations omitted.] Specifically, the Ohio court prospectively reduced Daryl's obligation from $1,000 to $600 per month because, contrary to Illinois law, that State refused to recognize inflation and maturation as reasons for increasing support.
>
> We do note, however, that Ohio may well have denied the 1978 Illinois order full faith and credit. It is generally established that one State must recognize a sister State's judgment to the degree that it is nonmodifiable. [Citations omitted.] The law is equally well settled that the second forum must apply to the first forum's law to determine the extent of modification. [Citations omitted.] Accordingly, then, to determine the degree to which the 1978 Illinois decree was modifiable, the Ohio court should

> have referred to Section 510 of the Illinois Marriage and Marriage Dissolution Act (Ill.Rev.Stat.1977, ch. 40, par. 510). That section dictates that a judgment of maintenance or support may not be modified retroactively and may be modified prospectively only upon a showing of changed circumstances. Moreover, courts of Illinois have consistently held that those facts which were the basis of the original decree become *res judicata* and that changed circumstances justifying modification of support must occur since the date of the decree. [Citations omitted.] In the case at bar, however, the Ohio court modified the Illinois decree within one or two months of the Illinois decree and based its ruling upon the same set of circumstances that the Illinois court had used and which had become *res judicata*. Furthermore, from our examination of the record, there was no indication of changed circumstances to justify the 1978 Ohio modification. Thus, although URESA may authorize a responding court to modify the initiating State's decree, the second forum must nonetheless give full faith and credit to the first judgment to the extent that it is nonmodifiable. By refusing to recognize our rules regarding modification, the court modified a judgment which was not subject to modification in Illinois." [98 Ill. App.3d 928, 931-32; 424 N.E.2d 957 (Ill. App. 1981) (Emphasis added).]

The Illinois appellate court then held that it was required to give full faith and credit to Ohio's judgment even though the Ohio court may have failed

to give the 1978 Illinois judgment full faith and credit. The court pointed out that any objections the wife had concerning the Ohio modification should have been directly appealed in Ohio and not collaterally attacked in Illinois. The court then stated: "The United States Supreme Court has long held that 'the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based.' (*Milliken v. Meyer* (1940), 311 U.S. 457, 462, 85 L.Ed. 278, 282-83, 61 S.Ct. 339, 342.)." *Sullivan*, 98 Ill. App. 932; 424 N.E.2d 957.

The *Sullivan* opinion is factually similar to the present matter since the obligor in *Sullivan* was present in the URESA court when the alleged modification of support took place. In the present situation, Maine officials were represented in the Maryland court room. Maine officials had expressly asked the Maryland court to determine a reasonable amount of support and order Roberts to pay it.

The presence of both the obligor and the obligee in the URESA court is a fact that was crucial to the court's decision in *Sullivan*. The *Sullivan* court pointed out specifically that the obligor was present at the time the support payment was prospectively modified. It is evident that the court based its decision on the fact that the obligee had voluntarily subjected herself to the jurisdiction of the responding court by appearing at the Ohio hearing. This conclusion is further supported by the fact that the *Sullivan* court stated that the wife should have directly appealed the reduction in the support order in Ohio rather than an

attempted collateral attack in Illinois. That both parties had the right to direct appeal of the responding court's judgment was a crucial factor in the *Sullivan* opinion that is also present in Roberts' case.

In the case at bar, after Petke assigned her interest in Roberts' child support obligation to Maine DHS in 1981, Maine DHS initiated the action in the Maryland court and participated as a party after following procedures to transfer jurisdiction from the Maine court to the Maryland court. With both Maine DHS and Roberts present as active participants, the Maryland court acted exactly as Maine DHS requested, finding that Petitioner was obligated to pay child support, but fixing a different, lesser amount of prospective support from that set by the initiating court in Maine. The finding of a reduced amount of support was based upon the fact that Roberts' employment changed between the 1981 date of the initial divorce decree in Maine and the 1983 modification in Maryland.

The Maryland action was not a distinct collateral enforcement action for past due installments, as was the situation in *Weidner, infra*. In the instant case, the Maryland state court prospectively modified the Maine support order after it was properly presented to the Maryland court when Maine DHS filed their action in the Maryland court. The Maryland court did not nullify the Maine order as it applied to any past due support installments. Most importantly, Maine never appealed the decision of the Maryland court, and thus – whether right or wrong – the Maryland state court judgment decision became final, and subject to Full Faith and Credit recognition by the Maine court and

Maine DHS, and *res judicata* as to the amount of prospective child support Roberts owed going forward from both the 1983 and 1984 final Maryland court judgments.

D. *Weidner v. Weidner*– An Improper Basis for a 12(b)(6) Dismissal in the Instant Case

The Maryland Court of Appeals case erroneously cited by the District Court as the basis for dismissal of Roberts' case is inapplicable and factually distinguishable. See *Weidner v. Weidner,* 553 A.2d 263 (Md. App. 1989). In *Weidner,* the parties were divorced in Maryland in 1965. The divorce decree ordered the husband to pay to pay $10.00 per week in child support for his dependent son, and $20.00 per week as alimony. Soon thereafter, the husband established his domicile in Florida and stopped making payments for child support and alimony. The wife sought the assistance of the State's Attorney of Baltimore City where she then resided. A petition was filed on behalf of the wife in the Circuit Court for Baltimore City and a certified copy thereof was transmitted to the Circuit Court for the Ninth Judicial Circuit of Florida, in and for Orange County. Invoking Maryland's version of URESA, Maryland sought to enforce the husband's duty to pay child support and alimony. On July 27, 1965, the Circuit Court for Orange County ordered the appellant to pay $20.00 per week as support for "his Dependents, Barbara A. Weidner and Albert Harry Weidner, Jr." without allocating that payment between alimony and child support.

On March 29, 1968, the husband filed a petition, in the same Florida court, for a reduction of his support obligation to $10.00 per week on the ground that his earnings had decreased. Notwithstanding the limited relief sought by the husband in his petition for reduction of his support obligation, the Florida court, without holding a hearing, entered an order modifying support payments owed by the husband. The record of the Florida court proceedings does not reflect that the wife received a copy of the husband's petition for reduction or a copy of the order. It did, however, show that a copy of that order was mailed to the Clerk of the Circuit Court for Baltimore City, Maryland. A URESA proceeding to enforce unpaid alimony support was commenced 19 years later.

The Maryland Appellate court cited the Florida statute which contained the language from Section 31 of URESA and held as follows: "[W]hatever the intent of the Florida court with regard to [husband's] duty to pay spousal support when it entered its somewhat ambiguous orders of July 27, 1965 and April 16, 1968, we hold that the judgment entered by the Circuit Court for Anne Arundel County [Maryland] on April 12, 1965 was not superseded or nullified. Judge Cawood correctly ruled that [the wife] was entitled to enforce that judgment by seeking a lien on the Social Security benefits due appellant." *Weidner v. Weidner,* 553 A.2d at 267. The Court rejected the husband's argument that the hearing court violated the Full Faith and Credit Clause of Article IV of the United States Constitution by "ignoring" the Florida decree. The Maryland court reasoned that "Florida's version of the URESA antisupersession statute, on its face, states that the entry of an order of support by a

Florida court in a URESA proceeding, when Florida is the responding state under the Act, does not supersede the original support order of the initiating state under the Act." *Id.*

Legal research into the value of the *Weidner* case as precedent indicates that a majority of states follow an analysis similar to that in *Weidner*, but the analysis must be qualified. The possibility that *Weidner* reflects a majority view may be misleading because the holding in *Weidner* is overbroad. As such, the *Weidner* opinion easily lends itself to citation as authority in cases to which it should not be applied.

There is no doubt *Weidner* is distinguishable from the facts in Roberts' case. In *Weidner*, the child support obligee did not appear at a modification hearing. In fact, there was no hearing. The child support obligee did not submit to the jurisdiction of the responding state. The child support obligee simply received notice in Maryland of the Florida judgment after the fact, i.e. at some point after the Florida court had already acted to alter the amount of the original obligations. Under these facts, it is proper to still enforce the original Maryland decree ordering support payments. And Petitioner does not challenge the application of Section 31 of the Act when under the *Weidner* facts, but those are far different from the facts in Roberts' case.

The distinction that courts, including the Maryland court in *Weidner*, have failed to make is when both parties appear before the responding court, and the obligor seeks modification based on a change in circumstances (such as reduced income from job loss),

the issues are litigated with both the obligor and obligee actively participating, a judgment is entered that prospectively alters the amount of support obligation consistent with the obligee's new employment and income circumstances, and both parties allow the judgment to become final without appeal.

E. The Fourth Circuit's Affirmation of the District Court's Dismissal Allows for Continued Confusion Amongst States in Child Support Collection Actions

Petitioner has not been permitted to advance his 42 U.S.C. § 1983 case against Maine DHS in response to their bad faith collection efforts on the original 1981 Maine support order. Maine has not even been required to answer Petitioner's Complaint. The District Court judge has been presented with two motions to dismiss and on each occasion has granted the motion. The second District Court dismissal was based on Fed. R. Civ. P. 12(b)(6).

A rule 12(b)(6) motion should be granted only in very limited circumstances. This Honorable Court has explained that "[t]he Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Conley v. Gibson,* 355 U.S. 41, 48; 78 S.Ct. 99; 103, 2 L.Ed.2d 80 (1957). The Fourth Circuit, which summarily affirmed the dismissal of Roberts' case, has long held "that a motion to dismiss for failure to state a claim for relief should not be granted unless it appears to a certainty

that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim." *Johnson v. Mueller,* 415 F.2d 354, 355 (4th Cir.1969) (citation omitted).

In general, URESA only sought to provide a mechanism whereby the orders of one state could be enforced in another state. But URESA did not address the issue of one state "modifying" the orders of another state, which state courts certainly had the power to do under the general equitable powers of state courts, and unusual as it may have been, is certainly what happened under any reasonable interpretation of the facts of this case. Because URESA led to a certain amount of confusion because of different orders in different states, UIFSA and federal laws such as 28 U.S.C. § 1738B tried to clarify this situation and create a "one-order world."

Congress sought to resolve the confusion regarding application of Full Faith and Credit with respect to modification of interstate support orders with enactment of 28 U.S.C. § 1738B in 1994, many years after the 1983 and 1984 final judgments of the Maryland court. Robert's Complaint cited 28 U.S.C. § 1738B as the relevant statute to apply here, and the District Court's Memorandum Opinion does not fully address this issue. The relevant portion of The Full Faith and Credit of Child Support Orders Act states:

> (e) **Authority To Modify Orders**. - A court of a State may modify a child support order issued by a court of another State if -

> (B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order.

28 U.S.C. § 1738B(e)(2)(B).

By the plain meaning of the words of the prayer in the Maine DHS Petition of March 17, 1982, Maine DHS consented, in writing, to the Maryland responding court setting a "fair and reasonable" amount of support based upon Roberts' employment and income circumstances at the time of the Petition. Their obvious consent is also manifest in that Maine DHS participated, without objection, as a party litigant when the Maryland responding court modified the initial 1981 Maine judgment in 1983 and again in 1984 on the Petition of Maine DHS, did not appeal either the 1983 or 1984 Maryland judgments, and accepted Roberts' subsequent child support payments that fully complied with the terms of the 1983 and 1984 Maryland judgments that Maine DHS themselves had requested.

As far as consent in writing by Roberts, if Roberts had had a crystal ball in 1983 and 1984, and had known exactly what Congress would say on this subject in 1994, he would have been willing to provide such consent in writing, but like Maine DHS, Roberts' consent is manifest in that he participated, without objection, as a party litigant when the Maryland responding court modified the initial 1981 Maine judgment in 1983 and again in 1984, did not appeal

either the 1983 or 1984 Maryland judgments, and fully complied with both the 1983 and 1984 Maryland judgments according to their terms.

Petitioner believes that this controversy would have been resolved with common sense many years ago, if not for the corrupting effects of misguided federal subsidy and incentive programs, and the dollar signs that one can see in the eyes of certain bureaucrats and some lawyers who expect to gain by legalistic sophistry what they cannot gain by due process of law.

Nothing in 28 U.S.C. § 1738B or the Constitution prevents 28 U.S.C. § 1738B from being applied prospectively once Congress clarified Full Faith and Credit issues insofar as they apply to a case such as this. There can be no reasonable doubt that Maine DHS did consent, in writing, to the Maryland court setting "fair and reasonable" support, and according to the plain words of 28 U.S.C. § 1738B, at least since 1994 Maine DHS has been compelled to grant Full Faith and Credit to the 1983, 1984, and 2001 Maryland judgments. There is no good excuse for Maine DHS not to have done so after Congress clarified those issues in 1994. The District Court's Dismissal with prejudice frustrates the clear intent of Congress as codified in 28 U.S.C. § 1738B, insofar as it applies to the facts of this case.

In light of the mandate for Full Faith and Credit unequivocally expressed in the Full Faith and Credit clause of the United States Constitution, Maine DHS is without excuse for ignoring the 1983, 1984, and 2001

Maryland judgments, even in the absence of 28 U.S.C. § 1738B.

The central issue of this case is the intent of the Maine court in forwarding the Petition of Maine DHS dated March 17, 1982 to the Maryland responding court. Petitioner has truthfully alleged that the intent of Maine DHS and the Maine court was that the Maryland court assume modification jurisdiction (Complaint, ppg. 24, 25, and elsewhere), whereas Maine DHS has repeatedly, falsely responded that "the Maine Department of Health and Human Services commenced a proceeding in Maryland state court to enforce the Maine order." Maine DHS has yet to dispute Roberts Complaint with an Answer.

In any event, the best evidence of the intent of the Maine DHS Petition, and of the Maryland court acting in response thereto, is in the prayer for relief, which requests *inter alia*:

> 1. Respondent be ordered to pay such sums per child per month as would be deemed fair and reasonable for the support of the named minor dependants.
> ... and ...
> 4. Such further relief be granted as this Court deems just and proper.

Also significant on this point is the evidence that, although jurisdiction for child support clearly was transferred from Maine to Maryland, jurisdiction for visitation continued in Maine as late as 1984, and Maine DHS could easily have still sought enforcement of the initial 1981 Maine judgment in the Maine court,

if they did not agree that the 1983 and 1984 Maryland judgments had modified the 1981 Maine judgment. It was only years later when bureaucrats who were not in the Maine and Maryland courtrooms in 1981, 1983 and 1984, and did not know or understand what had happened, initiated the current controversy, which continues to this day.

F. The *Rooker-Feldman* doctrine is also implicated in Roberts' case

The District Court 12(b)(6) dismissal judgment has the effect of directly reversing not one, but three, final and dispositive judgments of the Maryland state court. This dismissal directly contradicts the core principle of the *Rooker-Feldman* doctrine, i.e. that District Courts cannot act as appellate courts and undo final state court judgments. Given recent decisions of this Court on *Rooker-Feldman*, it is necessary for this Court to clarify the operation of the *Rooker-Feldman* doctrine in this case of first impression.

CONCLUSION

A writ of *certiorari* should be issued to review the judgment and opinion of the Fourth Circuit Court of Appeals. If *certiorari* is not granted, the Court runs the risk of perpetuating ongoing confusion and disparate application of a uniform law adopted in all fifty states. The Court would also run the risk of tacitly endorsing an unconstitutional construction of this law that, as applied, disregards the Full Faith and Credit Clause of the United States Constitution.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 07-1472
(1:04-cv-02039-WDQ)

[Filed February 19, 2008]

DAVID A. ROBERTS)
)
Plaintiff - Appellant)
)
v.)
)
JOHN NICHOLAS, individually and in)
his official capacity as Commissioner)
Maine Department of Health and Human)
Services; PETER WALSH, individually)
and in his official capacity as Commissioner)
of Maine Department of Health and Human)
Services; KEVIN W. CONCANNON,)
individually and in his official capacity as)
Commissioner (former) of Maine Department)
of Health and Human Services; MARK O.)
VAN VALKENBURGH, individually and in)
his official capacity as agent for the Maine)
Department of Health and Human Services;)
INGRID B. LAPOINTE, individually and in)
her official capacity as agent for the Maine)
Department of Health and Human Services;)

ANNE-MARIE JOHNSON, individually and in her official capacity as agent for the Maine Department of Health and Human Services; LORETTA DUMOND, individually and in her official capacity as agent for the Maine Department of Health and Human Services; MAINE DEPARTMENT OF HEALTH & HUMAN SERVICES

Defendants - Appellees

ORDER

The Court denies the petition for rehearing.

Entered at the direction of the panel: Judge Wilkinson, Judge Traxler, and Judge Gregory.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX B

UNPUBLISHED

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 07-1472

[Filed January 9, 2008]

DAVID A. ROBERTS,

Plaintiff - Appellant,

versus

JOHN NICHOLAS, individually and in his official capacity as Commissioner Maine Department of Health and Human Services; PETER WALSH, individually and in his official capacity as Commissioner of Maine Department of Health and Human Services; KEVIN W. CONCANNON, individually and in his official capacity as Commissioner (former) of Maine Department of Health and Human Services; MARK O. VAN VALKENBURGH, individually and in his official capacity as agent for the Maine Department of Health and Human Services; INGRID B. LAPOINTE, individually and in her official capacity as agent for the Maine

Department of Health and Human Services;)
ANNE-MARIE JOHNSON, individually and)
in her official capacity as agent for the Maine)
Department of Health and Human Services;)
LORETTA DUMOND, individually and in)
her official capacity as agent for the Maine)
Department of Health and Human Services;)
MAINE DEPARTMENT OF HEALTH &)
HUMAN SERVICES,)
)
Defendants - Appellees.)
)

Appeal from the United States District Court for the District of Maryland, at Baltimore. William D. Quarles, Jr., District Judge. (1:04-cv-02039-WDQ)

Submitted: December 7, 2007
Decided: January 9, 2008

Before WILKINSON, TRAXLER, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

David A. Roberts, Appellant Pro Se. Joseph B. Spillman, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL OF MARYLAND, Baltimore, Maryland; Christopher Coles Taub, OFFICE OF THE ATTORNEY GENERAL, Augusta, Maine, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David A. Roberts appeals the district court's order granting Defendants' Fed. R. Civ. P. 12(b)(6) motion. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Roberts v. Nicholas*, No. 1:04-cv-02039-WDQ (D. Md. Jan. 26, 2007). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-1472
(1:04-cv-02039-WDQ)

[Filed January 9, 2008]

DAVID A. ROBERTS)
)
Plaintiff - Appellant)
)
v.)
)
JOHN NICHOLAS, individually and in)
his official capacity as Commissioner)
Maine Department of Health and Human)
Services; PETER WALSH, individually)
and in his official capacity as Commissioner)
of Maine Department of Health and Human)
Services; KEVIN W. CONCANNON,)
individually and in his official capacity as)
Commissioner (former) of Maine Department)
of Health and Human Services; MARK O.)
VAN VALKENBURGH, individually and in)
his official capacity as agent for the Maine)
Department of Health and Human Services;)
INGRID B. LAPOINTE, individually and in)
her official capacity as agent for the Maine)
Department of Health and Human Services;)
ANNE-MARIE JOHNSON, individually and)
in her official capacity as agent for the Maine)
Department of Health and Human Services;)
LORETTA DUMOND, individually and in)
her official capacity as agent for the Maine)

Department of Health and Human Services;)
MAINE DEPARTMENT OF HEALTH &)
HUMAN SERVICES)
)
Defendants - Appellees)
)

JUDGMENT

In accordance with the decision of this Court, the judgment of the District Court is affirmed.

This judgment shall take effect upon issuance of this Court's mandate in accordance with Fed. R. App. P. 41.

/s/ Patricia S. Connor, Clerk

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, NORTHERN DIVISION

CIVIL NO.: WDQ-04-2039

[Filed April 23, 2007]

DAVID A. ROBERTS,)
)
Plaintiff,)
)
v.)
)
JOHN NICHOLAS, *et. al*,)
)
Defendants.)

ORDER

For the reasons discussed in the accompanying Memorandum Opinion, it is, this 20th day of April, 2007, ORDERED that:

1. The Plaintiff's motion for reconsideration (Paper No. 41) BE, and HEREBY IS, DENIED; and

2. The Clerk of the Court shall send copies of this Memorandum Opinion and Order to the Plaintiff and counsel for the Defendants.

/s/
William D. Quarles, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, NORTHERN DIVISION

CIVIL NO.: WDQ-04-2039

[Filed April 23, 2007]

DAVID A. ROBERTS,	)
	)
Plaintiff,	)
	)
v.	)
	)
JOHN NICHOLAS, *et. al*,	)
	)
Defendants.	)
	)

MEMORANDUM OPINION

David A. Roberts, *pro se*, has sued the Maine Department of Health and Human Services (the "DHHS"), John Nicholas, Commissioner of the DHHS, and six other DHHS employees individually and in their official capacities, for civil rights violations under 42 U.S.C. § 1983. Pending is Roberts's unopposed motion for reconsideration of the Court's January 26, 2007 Order dismissing the Complaint (Paper No. 40, the "Order"). For the following reasons, the motion will be denied.

I. Background

On July 1, 2004, Roberts filed his Complaint, claiming that the Defendants' conduct in pursuit of arrearages under a Maine court's 1981 child support order (the "Maine Support Order") violated the Full Faith and Credit Clause of Article IV, the Fourth Amendment, the Due Process Clauses of the Fifth and Fourteenth Amendments, and the Full Faith and Credit for Child Support Orders Act (the "FFCCSOA"), 28 U.S.C. § 1738B.

On September 9, 2006, the Defendants moved to dismiss the Complaint arguing, *inter alia*, that Roberts failed to state a claim upon which relief can be granted. Paper No. 36. For reasons stated in the accompanying Memorandum Opinion (Paper No. 39, the "Opinion"), the Court's Order dismissed the Complaint with prejudice for failure to state a claim under Rule 12(b)(6).

The factual and procedural history is further described in the Court's Opinion. Opinion 1-5.

II. Discussion

Roberts seeks reconsideration, arguing that:

(1) dismissal was improper because there is a factual dispute over whether the Maine court intended for the Maryland court to modify the Maine Support Order;

(2) although the Maryland court could not supersede the Maine Support Order, it could still modify the order;

(3) the Court's Order violates the FFCCSOA;

(4) the Court's Order violates the *Rooker-Feldman* doctrine, the "Doctrine of Dismissal With Prejudice," and the doctrine of *res judicata*;

(5) the Court's Order violates the clean-hands doctrine; and

(6) the Court's dismissal with prejudice was inappropriate and manifestly unjust.

A. Standard of Review

Under Federal Rule of Civil Procedure ("Rule") 59(e), a court may grant a motion for reconsideration to: (1) accommodate an intervening change in controlling law; (2) account for new evidence previously unavailable; or (3) correct a clear error of law or prevent manifest injustice. *Bogart v. Chapell*, 396 F.3d 548, 555 (4th Cir. 2005).

A court may amend a final judgment under Rule 60(b) because of, *inter alia*: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or other misconduct of an adverse party; or (4) any other reason justifying relief from the operation of the judgment. Fed. R. Civ. P. 60(b).

B. Analysis

1. Intent to Modify the Support Order

Roberts argues that the Court's dismissal for failure to state a claim was improper because if, as he alleges, the Maine court intended for the Maryland court to modify the Maine Support Order, then the Defendants' collection efforts to enforce a superseded support order would support his civil-rights claims.

As explained in the Opinion, as a matter of law, the Maryland state court's support orders could not have superseded the Maine Support Order. Opinion 8-9.

2. The Power to Supersede versus Modify

Roberts follows with a semantic argument that the word "modify" has a different meaning than "supercede;" thus, he argues, the statute- and case-law that precludes the supersession of a state's child support orders by the courts of another state does not determine whether one state's court may modify the order of another.

To the extent that an order is modified, it is superseded, nullified, and otherwise deprived of effect. A prohibition against supersession or nullification thus necessarily precludes any modification.

3. FFCCSOA

Roberts argues that the Court's determination that the Maine Support Order remains in effect violates the FFCCSOA. Roberts contends that the DHHS

consented to the Maryland court assuming exclusive jurisdiction over the Maine Support Order when it filed its March 1982 petition to enforce the order in Maryland, thus granting the Maryland court the power to modify the Maine Support Order under 28 U.S.C. § 1738B(a)(2) and (e)(2)(B); Def.'s Mot. to Dismiss Ex. D (the "Petition").

Roberts's argument is without merit. Even if, as he alleges, the Petition to enforce the Maine Support Order could be characterized as a consent to Maryland assuming exclusive jurisdiction, which is by no means evident in the document,[1] and the FFCCSOA, enacted in 1994, would apply retroactively to the DHHS's 1982 Petition, the Maryland court still would have lacked the power to modify the Maine Support Order because the Maine Support Order was never registered in Maryland for that purpose pursuant to 28 U.S.C. § 1738B(i).

4. The *Rooker-Feldman* Doctrine, the "Doctrine of Dismissal With Prejudice," and *Res Judicata*

Roberts argues that the Court's Order dismissing his civil rights claims with prejudice violates the *Rooker-Feldman* doctrine because it would reverse the 2001 Maryland court order dismissing the DHHS's action to enforce the Maine Support Order under the Uniform Interstate Family Support Act ("UIFSA"), Md. Code Ann., Fam. Law §§ 10-301 to -359. Roberts

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[1] Roberts alleges the DHHS's prayer for "such sums per child per month as would be deemed fair and reasonable" gives such consent. Petition 2.

contends that the Defendants' motion to dismiss his Complaint was "a disguised appeal of the final and dispositive Maryland State Court Judgment." Mot. for Recon. 10. Similarly, he contends that, by dismissing his civil rights claims, the Court has "incorporated [the DHHS's UIFSA] claim into its Memorandum Opinion and Order, in violation of the Doctrine of Dismissal With Prejudice," and *res judicata.*

"[T]he *Rooker-Feldman* doctrine applies only when the loser in state court files suit in federal district court seeking redress for an injury allegedly caused by the state court's decision." *Davani v. Va. Dep't of Transp.*, 434 F.3d 712, 713 (4th Cir. 2006). This action was not brought by the DHHS to enforce the Maine Support Order; rather, Roberts is the instigator of this action, claiming that Maine's collection efforts violate his civil rights. As explained in the Opinion, the Maryland court's dismissal of the 2001 UIFSA action had no effect on the power of the Maine Support Order. Opinion 10-12. The Court's determination that the Defendants' efforts to collect on a valid Maine Support Order do not violate Roberts's civil rights has no effect on the finality of the Maryland court's judgment on the DHHS's UIFSA action.

5. The Clean-Hands Doctrine

Roberts contends that the Court's Opinion violates the clean-hands doctrine because it does not address his allegations that the Defendants made "several misleading, reckless and false assertions of fact," and used "illegal and extortionate collection tactics and threats." Mot. for Recon. 11 (*quoting* Compl. ¶¶ 51, 81).

The clean-hands doctrine is a defense to a plaintiff's request for equitable relief, founded on the ancient maxim that "he who comes into equity must come with clean hands." *Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co.*, 324 U.S. 806, 814 (1945). The doctrine plainly cannot be invoked by a plaintiff to bolster his own claims under a federal statute. Furthermore, Roberts's conclusory allegations of lies, threats, and extortion are based his erroneous conclusion that the Maine Support Order was no longer valid, and the Defendants' ensuing collection attempts were illegal.

6. Dismissal with Prejudice Inappropriate and a Manifest Injustice

Roberts argues that the Court's dismissal for failure to state a claim under Rule 12(b)(6) was inappropriate because he has ample evidence to support his allegations, and the Court should have granted him leave to amend the Complaint to properly state his claims. He further argues that the Court's Order is manifestly unjust because it "denies [him] the legal remedies to which he is entitled as a citizen of the United States of America."

The Order to dismiss with prejudice was appropriate because Roberts's claims are all based on the erroneous assumption that he has no further obligation under the Maine Support Order. The Court has explained, as a matter of law, that the Maine Support Order is valid and has not been superceded or modified by any of the Maryland court orders related to its enforcement. Opinion 7-12. No amendment to the Complaint could overcome its legal defect, and

finding that the Defendants' efforts to collect overdue child-support payments are justified works no manifest injustice.

III. Conclusion

For the reasons stated above, Roberts's arguments fail to justify reconsideration of the Court' Order. Accordingly, his motion will be denied.

April 20, 2007
Date

/s/
William D. Quarles, Jr.
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, NORTHERN DIVISION

CIVIL NO.: WDQ-04-2039

[Filed January 26, 2007]

DAVID A. ROBERTS,

Plaintiff,

v.

JOHN NICHOLAS, *et. al*,

Defendants.

ORDER

For the reasons discussed in the accompanying Memorandum Opinion, it is, this 26th day of January, 2007, ORDERED that:

1. The Defendants' motion to dismiss (Paper No. 36) BE, and HEREBY IS, GRANTED;

2. The Plaintiff's Complaint (Paper No. 1) BE, and HEREBY IS, DISMISSED WITH PREJUDICE;

3. This case BE, and HEREBY IS, CLOSED; and

4. The Clerk of the Court shall send copies of this Memorandum Opinion and Order to the Plaintiff and counsel for the Defendants.

/s/
William D. Quarles, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, NORTHERN DIVISION

CIVIL NO.: WDQ-04-2039

[Filed January 26, 2007]

DAVID A. ROBERTS,	)
	)
Plaintiff,	)
	)
v.	)
	)
JOHN NICHOLAS, *et. al*,	)
	)
Defendants.	)
	)

MEMORANDUM OPINION

David A. Roberts, *pro se*, has sued the Maine Department of Health and Human Services (the "DHHS"),[1] John Nicholas, Commissioner of the DHHS, and six other DHHS employees individually and in their official capacities, for civil rights violations under 42 U.S.C. § 1983. Pending is the Defendants' motion to dismiss. For the following reasons, the motion will be granted.

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[1] The DHHS was known as the "Maine Department of Human Services" when this case was filed, but has changed its name to the "Maine Department of Health and Human Services."

I. Background

a. State Child Support Proceedings

On January 22, 1981, Roberts was divorced from his former wife, Rosemary H. Petke, in Maine's District Court for Southern Aroostook County Compl. ¶ 17. The Maine court's divorce order ordered Roberts to pay $120 per month in child support for each of his three children. Defs.' Mot. to Dismiss ("Defs.' Mot." Ex. C (Jan. 22, 1981 order of Maine district court, the "Maine Support Order").

Roberts was a Maine resident when the divorce was filed, but moved to Maryland soon after the Maine Support Order was entered. Compl. ¶¶ 19-20.

On February 23, 1981, Petke applied to the DHHS for financial aid for her children, and thereby subrogated her right to child support under the Maine Support Order to the State of Maine. *Id.* ¶ 21.

On March 17, 1982, the DHHS filed a petition with Maine's Superior Court for Aroostook County (the "Maine Superior Court") pursuant to the Uniform Reciprocal Enforcement of Support Act ("URESA"),[2]

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[2] URESA was adopted in both Maine and Maryland, and was codified in Maine as Me. Rev. Stat. Ann. tit. 19, §§ 331-420, and in Maryland as Md. Ann. Code art. 89C §§ 1-39. It was recodified in Maryland in 1984 as Md. Code Ann., Fam. Law §§ 10-301 to -420 (1984). 1984 Md. Laws ch. 296. URESA has been superceded in both states by the Uniform Interstate Family Support Act ("UIFSA"), codified as Me. Rev. Stat. Ann. tit. 19-A, §§ 2801-3401, and Md. Code. Ann. Fam. Law §§ 10-301 to -359.

seeking a judgment against Roberts for $4,680 in child support arrearages and an order for him "to pay such sums per child per month as would be deemed fair and reasonable." *Id.* ¶ 22; Defs.' Mot. Ex. D (the "Petition"). The Maine Superior Court certified the Petition on March 23, and ordered it sent to the Maryland Department of Human Resources for subsequent action in the appropriate Maryland court pursuant to URESA. Compl. ¶ 23; Defs.' Mot. Ex. E (Maine Superior Court certification order).

On April 14, 1982, the Petition was docketed in Maryland's Circuit Court for Wicomico County (the "Circuit Court"). Defs.' Mot. 6, Ex. G. On January 7, 1983, the Circuit Court ordered Roberts's child support payments suspended until he finished school, and on April 27, 1984, the Circuit Court ordered Roberts to begin paying $180 per month to the DHHS on May 1, 1984. Compl. ¶¶ 27-29; Defs.' Mot. Exs. H, I.

On March 31, 1997, the DHHS asserted that the Maine Support Order was still effective and filed a lien for arrearages on Roberts's federal income tax refunds in Maryland's Circuit Court for Dorchester County. Compl. ¶¶ 33-34.

On November 20, 2000, the DHHS filed another action to collect arrearages under the Maine Support Order in the Circuit Court pursuant to the Uniform Interstate Family Support Act ("UIFSA").[3] Id. ¶ 35. The State's Attorney for Wicomico County filed a motion to dismiss the case, asserting that Maryland

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[3] See note 2, *supra*.

already had an enforcement order in place for the parties and the case had been closed. *Id.* ¶ 38. On May 14, 2001, the Circuit Court granted the motion and dismissed the UIFSA action with prejudice. *Id.* ¶ 39 Defs.' Mot. Ex. J.

b. Federal Civil-Rights Case Proceedings

Roberts alleges that the DHHS continues to attempt to collect arrearages under the Maine Support Order, and, in addition to the federal tax lien, has sent him collection notices, reported adverse information to national credit bureaus, attempted to withhold his wages, and threatened him with criminal prosecution under the Child Support Recovery Act, 18 U.S.C. § 228. *Id.* ¶¶ 40-41, 54-57, 59, 62-66, 69-71, 74-75.

On July 1, 2004, Roberts filed his Complaint, claiming that the Defendants' conduct in pursuit of arrearages under the Maine Support Order has violated the Full Faith and Credit Clause of Article IV, the Fourth Amendment, the Due Process Clauses of the Fifth and Fourteenth Amendments, and the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B.

On August 27, the Defendants moved to dismiss the Complaint, arguing that the Court lacked subject matter jurisdiction under the *Rooker-Feldman* doctrine.[4] Paper No. 5. The Court granted the motion,

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[4] See Justice Ginsburg's opinion in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005), for an account of the doctrine's history and its correct application.

applying the Fourth Circuit's former guidance on the *Rooker-Feldman* doctrine, and dismissed the Complaint for the reasons stated in its December 17, 2004 Memorandum Opinion. Paper No. 20.

On January 18, 2005, Roberts appealed, and subsequently, on March 30, 2005, the U.S. Supreme Court clarified the scope of the *Rooker-Feldman* doctrine in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). On May 24, 2006, the Fourth Circuit vacated this Court's December 17, 2004 Order and remanded the case for further consideration in light of *Exxon Mobil Corp.* and the Fourth Circuit's subsequent interpretation of the *Rooker-Feldman* doctrine in *Davani v. Va. Dep't of Transp.*, 434 F.3d 712, 713 (4th Cir. 2006). *Roberts v. Nicholas*, 182 F. App'x 201, 203 (4th Cir. 2006).

The Defendants advise the Court that they no longer rely on the *Rooker-Feldman* doctrine, and instead move the Court to dismiss the Complaint because: (1) Roberts fails to state a claim upon which relief can be granted; (2) the individual defendants are entitled to qualified immunity; (3) the Court lacks personal jurisdiction over the Defendants; and (4) neither the DHHS nor its employees sued in their official capacities are subject to liability under 42 U.S.C. § 1983.

II. Discussion

A. Standard of Review for Failure to State a Claim

Under Federal Rule of Civil Procedure ("Rule") 12(b)(6), a motion to dismiss should be granted "only if

it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002), (*citing Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)); *Mylan Laboratories, Inc. v. Raj Matkari, et al.*, 7 F.3d 1130, 1134 (4th Cir. 1993). All allegations of fact are treated as true, and the complaint is viewed in the light most favorable to the plaintiff. *Mylan*, 7 F.3d at 1134. But the court is not required to accept as true "legal conclusion[s] couched as a factual allegation[s], "unwarranted deductions of fact, or unreasonable inferences." *Papasan v. Allain*, 478 U.S. 265, 286 (1986); *Veney v. Wyche*, 293 F.3d 726, 730 (4th Cir. 2002) (citation and internal quotation marks omitted). Nor must the court "accept as true allegations that contradict matters properly subject to judicial notice or by exhibit." *Veney*, 293 at 730 (citation and internal quotation marks omitted).

In deciding a Rule 12(b)(6) motion, the court will consider the facts stated in the complaint and any incorporated documents. *Biospherics, Inc., v. Forbes, Inc.*, 989 F. Supp. 748, 749 (D. Md. 1997), *aff'd*, 151 F.3d 180 (4th Cir. 1998)). The court may also consider documents referred to in the complaint and relied upon by the plaintiff in bringing the action, as well as facts subject to judicial notice, such as the content of court records. *Id.*; *Colonial Penn Ins. Co. v. Coil*; 887 F.2d 1236, 1239-40 (4th Cir. 1989).

When a civil rights plaintiff appears *pro se*, there is "a greater burden and a correlative greater responsibility upon the district court to insure that constitutional deprivations are redressed and that justice is done." *Gordon v. Leeke*, 574 F.2d 1147, 1151

(4th Cir. 1978). "[T]he district court must examine the pro se complaint to see whether the facts alleged, or the set of facts which the plaintiff might be able to prove, could very well provide a basis for recovery under any of the civil rights acts or heads of jurisdiction in the federal arsenal for redress of constitutional deprivations." *Id.* The court should "not permit technical pleading requirements to defeat the vindication of any constitutional rights which the plaintiff alleges, however inartfully, to have been infringed." *Id.*

B. Statutory Background:

URESA was approved by the National Conference of Commissioners on Uniform State Laws in September 1950, and was adopted by Maryland on June 1, 1951, and by Maine on August 8, 1953. 9C Uniform Laws Annotated 1-3 (1957). A primary purpose of the act was "to improve and extend by reciprocal legislation the enforcement of duties of support." Md. Code Ann., § 10-302 (1984). URESA was superceded by the enactment of UIFSA in Maryland on January 1, 1997, and in Maine on July 1, 1995. 1996 Md. Laws ch. 667; 1994 Me. Legis. Serv. ch. 690.

Under URESA, a person owed child support (the "Obligee") under the law of one state (the "Rendering State") could file a petition in a court of that or any other state having enacted URESA (the "Initiating State") seeking enforcement of a child support order of the Rendering State in another URESA state (the "Responding State") that could obtain jurisdiction over the person owing that support (the "Obligor"). *Id.*

§§ 10-301, -304, -307, -309, -311. An Obligee could be a state or political subdivision. *Id.* § 10-301, -308. If the court of the Initiating State found that there was a duty of support and the Responding State could obtain jurisdiction over the Obligor, it certified the petition and sent it to the appropriate court or official of the Responding State. *Id.* § 10-313. If the court of the Responding State found a duty of support, it could order the Obligor to provide support or reimbursement for any arrearages. *Id.* § 10-322, -324.

As to any effect of the Responding State court's order on the Rendering State court's order, Maryland's URESA statute explicitly provided in part that "[a]n order of support issued by the court of this State when acting as a responding state does not supercede any other order of support." *Id.* § 10-328.

In Maine's URESA statute, the corresponding section provided in part:

> A *support order made by a court* in this State pursuant to this Act does not nullify and *is not nullified by* a support order made by a court in this State pursuant to any other law or by *a support order made by a court of any other state* pursuant to a substantially similar Act or any other law, regardless of priority of issuance, *unless otherwise specifically provided by the court*. . . .

Me. Rev. Stat. Ann. tit. 19 § 409 (1971) (emphasis added). As Md. Code Ann, Fam. Law § 10-328 (1984) stated that a support order of a Maryland court, as the court of Responding State, "does not supersede any

other order of support," nullification of a Maine support order by a Maryland support order was not possible under URESA. Md. Code Ann., Fam. Law § 10-328 (1984) (previously codified as Md. Ann. Code art. 89C § 29).

C. Analysis

The Defendants argue that, even if all of Roberts's factual allegations are true, the Maine Support Order is still in effect, and thus their alleged conduct in attempting to enforce that order is a lawful exercise of their rights.

Roberts does not allege that he has fully complied with the Maine Support Order; rather, he maintains that: (1) the Maine Support Order was modified by the Maryland Circuit Court's subsequent orders in 1983 and 1984; and (2) the DHHS's "claim" for arrearages under the Maine Support Order has been precluded by the Circuit Court's dismissal of the UIFSA action on May 14, 2002. Resp. 2.

First, Robert's legal conclusion that the Maine Support Order was modified by any subsequent Maryland Circuit Court support order is incorrect. "Notwithstanding the authority vested in the court of the responding state to make its decision on whether the alleged obligor owes a duty of support and the extent thereof in conflict with any prior order of a court in the initiating state, its URESA order does not nullify the order of the initiating state fixing the support obligation of the obligor." *Weidner v. Weidner*, 78 Md. App. 367, 372 (Md. Ct. Spec. App. 1989). In *Weidner*, the Court of Special Appeals espoused the

view, supported by "the great weight of authority in other jurisdictions . . . that the antisupersession provision of URESA means that the initiating state will not be bound by the terms of a support order of a responding state when the initiating state . . . calculates arrearages due under the original support order." *Id.* at 373-74 (*citing* Md. Code Ann. art. 89C § 29.).[5]

Even after Maine and Maryland adopted UIFSA, the Maine Support Order remained and was unaffected by the Circuit Court's dismissal of the DHHS's UIFSA action in 2001. Under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B, a Responding State court cannot modify the support order of an Initiating State's court unless either the Initiating State's court no longer has continuing, exclusive jurisdiction, or each individual contestant consents to the Responding State court assuming exclusive jurisdiction. 28 U.S.C. § 1738B(e) (1997). In this case, Maine would still have continuing, exclusive jurisdiction over the Maine Support Order, as it is the residence of a "contestant"--the State. *Id.* § 1738B(b), (d), (e).[6]

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[5] Moreover, as judgments entered by courts of different states under URESA statutes are "effective independently of each other," the issuance and enforcement of either state's support order does not violate the Full Faith and Credit Clause of Article IV. *See id.* at 374 (initiating court's failure to give effect to responding court's reduction of support obligations did not violate Full Faith and Credit Clause).

[6] 28 U.S.C. 1738B provides in relevant part:

(b) *Definitions*.--In this section:

Second, the Defendants' right to enforce the Maine Support order is not precluded by the Circuit Court's 2001 dismissal of the UIFSA action. "Under the doctrine of *res judicata*, or claim preclusion, '[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.'"

. . .

"contestant" means-

. . .

(B) a State or political subdivision of a State to which the right to obtain child support has been assigned.

. . .

(d) *Continuing jurisdiction.*--A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the residence of any individual contestant unless the court of another State, acting in accordance with subsections (e) and (f), has made a modification of the order.

(e) *Authority to modify orders.*--A court of a State may modify a child support order issued by a court of another State if-

(1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and (2)(A) the court of the other State *no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any individual contestant*; or (B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order.

28 U.S.C. § 1738B (1997) (emphasis added).

Pueschel v. U.S., 369 F.3d 345, 354 (4th Cir. 2004) (*quoting Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981).

The DHHS's rights under the Maine Support order were litigated and *res judicata* in 1981, thus a final judgment on the merits of the subsequent UIFSA action in 2001 has no effect on the DHHS's right to enforce the Maine Support Order. As the Defendants note, the doctrine of *res judicata* might only require that the Circuit Court's dismissal bars further UIFSA actions by the DHHS in Maryland.

III. Conclusion

As the Maine Support Order remains in effect, the Defendants are entitled to every legal means available to enforce Roberts's obligations under it, including the collection efforts Roberts mischaracterizes as violations of his civil rights: filing a lien on his federal tax returns, reporting his arrearages to national credit bureaus, sending him collection notices, attempting to withhold his wages, and notifying him of possible criminal liability under the Child Support Recovery Act. Such alleged lawful collection measures on child support arrearages do not amount to constitutional violations. Accordingly, Roberts fails to state a claim upon which relief can be granted under 42 U.S.C. § 1983, and the Complaint will be dismissed.

January 26, 2007
Date

/s/
William D. Quarles, Jr.
United States District Judge

APPENDIX E

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 05-1096
CA-04-2039-WDQ

[Filed May 24, 2006]

DAVID A. ROBERTS)
)
Plaintiff - Appellant)
)
v.)
)
JOHN NICHOLAS, Commissioner,)
Maine Department of Health and Human)
Services, and individually; PETER WALSH,)
Individually and in his official capacity as)
Commissioner of Maine Department of Health)
and Human Services; KEVIN W. CONCANNON,)
Individually and in his official capacity as)
Commissioner (former) of Maine Department)
of Health and Human Services; MARK O.)
VAN VALKENBURGH, Individually and in)
his official capacity as Agent for the Maine)
Department of Health and Human Services;)
INGRID B. LAPOINTE, Individually and in)
her official capacity as Agent for the Maine)
Department of Health and Human Services;)
ANNE-MARIE JOHNSON, Individually and)

in her official capacity as Agent for the Maine Department of Health and Human Services; LORETTA DUMOND, Individually and in her official capacity as Agent for the Maine Department of Health and Human Services; MAINE DEPARTMENT OF HEALTH & HUMAN SERVICES	)
Defendants - Appellees	)

Appeal from the United States District Court for the District of Maryland at Baltimore.

JUDGMENT

In accordance with the written opinion of this Court filed this day, the Court vacates the judgment of the District Court. This case is remanded to the District Court for further proceedings consistent with the Court's opinion.

A certified copy of this judgment will be provided to the District Court upon issuance of the mandate. The judgment will take effect upon issuance of the mandate.

/s/ Patricia S. Connor
CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-1096

[Filed May 24, 2006]

DAVID A. ROBERTS)
)
Plaintiff - Appellant)
)
v.)
)
JOHN NICHOLAS, Commissioner,)
Maine Department of Health and Human)
Services, and individually; PETER WALSH,)
Individually and in his official capacity as)
Commissioner of Maine Department of Health)
and Human Services; KEVIN W. CONCANNON,)
Individually and in his official capacity as)
Commissioner (former) of Maine Department)
of Health and Human Services; MARK O.)
VAN VALKENBURGH, Individually and in)
his official capacity as Agent for the Maine)
Department of Health and Human Services;)
INGRID B. LAPOINTE, Individually and in)
her official capacity as Agent for the Maine)
Department of Health and Human Services;)
ANNE-MARIE JOHNSON, Individually and)
in her official capacity as Agent for the Maine)
Department of Health and Human Services;)
LORETTA DUMOND, Individually and in)
her official capacity as Agent for the Maine)

Department of Health and Human Services;)
MAINE DEPARTMENT OF HEALTH &)
HUMAN SERVICES)
)
Defendants - Appellees)
)

Appeal from the United States District Court for the District of Maryland, at Baltimore. William D. Quarles, Jr., District Judge. (CA-04-203 9-WDQ)

Submitted: March 13, 2006
Decided: May 24, 2006

Before TRAXLER and GREGORY, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

David A. Roberts, Appellant Pro Se. Joseph B. Spillman, Assistant Attorney General, Baltimore, Maryland; Christopher Coles Taub, OFFICE OF THE ATTORNEY GENERAL, Augusta, Maine, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c) .

PER CURIAM:

David A. Roberts appeals the order of the district court dismissing his suit against the Maine Department of Human Services and several current and former state officials (collectively "MDHS") for

lack of subject matter jurisdiction. This lawsuit arose out of attempts by MDHS to enforce a Maine state court child support order. Roberts sued under 42 U.S.C. § 1983 (2000), alleging that MDHS's enforcement efforts violated his constitutional rights. The district court held that the *Rooker-Feldman* doctrine barred Roberts's suit. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

Subsequent to the district court' s dismissal of Roberts's complaint, the Supreme Court clarified the scope of the *Rooker- Feldman* doctrine in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 125 S. Ct. 1517 (2005):

> The *Rooker-Feldman* doctrine . . . is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.

Id. at 1521-22 ; *see also Davani v. Va. Dep't of Transp.*, 434 F.3d 712, 713 (2006) ("*Exxon* requires us to examine whether the state-court loser who files suit in federal district court seeks redress for an injury caused by the state-court decision itself. If he is not challenging the state-court decision, the *Rooker-Feldman* doctrine does not apply.")

Roberts's complaint alleges a constitutional injury arising not expressly from the state court judgment itself, but rather from MDHS's post-judgment collection efforts. The district court did not have the benefit of *Exxon* and *Davani* in its assessment of the applicability of the *Rooker-Feldman* doctrine. Moreover, assuming that the *Rooker-Feldman* doctrine no longer precludes Roberts's suit from going forward, the district court has not had an opportunity to address either the merits of Robert's complaint, or the other defenses raised by MDHS. Because the district court is in the best position to evaluate these matters in the first instance, we vacate the district court's order and remand the case for further consideration.*

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED

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* Our disposition should not be read as indicating any view regarding the applicability of the *Rooker Feldman* doctrine or the other defenses asserted by MDHS, on the merits. We leave these matters for plenary resolution by the district court, as that court deems appropriate.

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, NORTHERN DIVISION

CIVIL NO.: WDQ-04-2039

[Filed January 19, 2005]

DAVID A. ROBERTS,)
)
Plaintiff,)
)
v.)
)
JOHN NICHOLAS, et. al,)
)
Defendants.)
)

ORDER

David A. Roberts has filed a motion to reconsider the Court's Order of December 17, 2004, dismissing this case. Having found no cause to amend the Order, the motion for reconsideration will be denied.

For the foregoing reasons, it is, this 19th day of January 2005, ORDERED that:

1. the Plaintiff's motion for reconsideration BE, and HEREBY IS, DENIED; and

2. the Clerk of the Court shall send copies of this Order to counsel for the parties

/s/
William D. Quarles, Jr.
United States District Judge

APPENDIX G

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, NORTHERN DIVISION

CIVIL NO.: WDQ-04-2039

[Filed December 17, 2004]

DAVID A. ROBERTS,	)
	)
Plaintiff,	)
	)
v.	)
	)
JOHN NICHOLS, COMMISSIONER, MAIN DEPARTMENT OF HUMAN SERVICES, et al.,	)
	)
Defendants.	)

ORDER

For the reasons discussed in the accompanying Memorandum Opinion, it is, this 17th day of December 2004, ORDERED that:

1. the Defendants' motion to dismiss for lack of subject matter jurisdiction BE, and HEREBY IS, GRANTED;

2. this case BE, and HEREBY IS, DISMISSED; and

3. the Clerk of the Court shall send copies of this Memorandum Opinion and Order to counsel for the parties.

/s/
William D. Quarles, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, NORTHERN DIVISION

CIVIL NO.: WDQ-04-2039

[Filed December 17, 2004]

DAVID A. ROBERTS,	)
	)
Plaintiff,	)
	)
v.	)
	)
JOHN NICHOLS, COMMISSIONER, MAIN DEPARTMENT OF HUMAN SERVICES, et al.,	)
	)
Defendants.	)

MEMORANDUM OPINION AND ORDER

David A. Roberts has sued the Commissioner of the Maine Department of Human Resources ("MDHR") and several MDHR employees, alleging civil rights violations under 42 U.S.C. § 1983.[1] Pending is the

[1] Section 1983 provides, in pertinent part, that:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the

Defendants' motion to dismiss for lack of subject matter jurisdiction. For the reasons discussed below, the motion will be granted.

BACKGROUND

Roberts was divorced from his former wife, Rosemary Petke, in the state of Maine on January 22, 1981. Compl. ¶ 17. The judgment of divorce incorporated the terms of a Property Settlement Agreement (the "Agreement") between the parties. *Id.* ¶ 18. The Agreement specified property division, child support, child custody, visitation, and alimony. *Id.* Pursuant to the Agreement, Roberts was obligated to pay $120 per month, per child, in child support until each child reached the age of eighteen. Defs.' Ex. A (Maine Child Support Order).

Roberts was a Maine resident when the divorce was filed, but moved to Maryland once it became final. Compl. ¶¶ 19-20.

On February 23, 1981, Petke applied for aid for dependent children through MDHR. *Id.* ¶ 21. In doing so, Petke subrogated her rights to seek child support to MDHR. *Id.*

On March 24, 1982, MDHR sought modification of child support and payment of alleged child support arrears in the Circuit Court for Wicomico County,

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Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Maryland ("the Circuit Court"), under the Uniform Reciprocal Enforcement of Support Act ("URESA").[2] *Id.* ¶ 22. On January 7, 1983, the Circuit Court modified Roberts's child support obligation by suspending payments while Roberts was attending school. *Id.* ¶ 27.

On April 27, 1984, the Circuit Court modified Roberts's child support obligation again, requiring that he pay $180 per month.[3] *Id.* ¶ 29. Roberts complied with Circuit Court's Order. *Id.* ¶ 30.

On March 31, 1997, MDHR caused a federal tax lien to be placed upon Roberts's taxes in an effort to collect arrearages on the Maine Child Support Order. *Id.* ¶ 33.

On November 20, 2000, MDHR filed another action to enforce and collect child support arrearages under the Maine Child Support Order in the Circuit Court. *Id.* ¶ 35. The State's Attorney for Wicomico County filed a motion to dismiss the case, asserting that Maryland had an enforcement order in place for the

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[2] URESA provided for interstate collection of child support. The statute had been adopted in both Maine and Maryland, and was codified at ME. REV. STAT. ANN. tit. 19, §§ 332 *et seq.* and MD. CODE ANN., FAMILY LAW §§ 10-301 *et seq.*

[3] URESA provided that an order of support issued by one state when acting to enforce a child support order of another state, did not supersede any other order of support. Amounts paid for a particular period under either order were credited against amounts due for the same period under both Orders. ME. REV. STAT. ANN. tit. 19, § 409 (1991); MD. CODE ANN., FAMILY LAW § 10-329 (1991).

parties and that the case had been closed. *Id.* ¶ 38. The Circuit Court granted the motion on May 14, 2001. *Id.* ¶ 39. MDHR has continued to send collection notices to Roberts for arrearages on the Maine Child Support Order, and has sent delinquency information to credit bureaus. *See generally*, Compl.

STANDARD OF REVIEW

In a motion to dismiss for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1), a defendant may argue either that the complaint fails to allege facts upon which subject matter may be based, or that the jurisdictional facts alleged are untrue. *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982). When the allegations in the complaint are assumed to be true, the court will consider the motion as one brought under Rule 12(b)(6). *Id.* Unlike a Rule 12(b)(6) motion, however, in ruling on a Rule 12(b)(1) motion, the court may consider exhibits outside the pleadings without converting the motion to one for summary judgment. *See Williams v. United States*, 50 F.3d 299, 304 (4th Cir. 1995).

Under Rule 12(b)(6), dismissal of a complaint is not appropriate "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). A Rule 12(b)(6) motion tests the legal sufficiency of the complaint, not the facts that support it. *Dist. 28, United Mine Workers of Am., Inc. v. Wellmore Coal Co.*, 609 F.2d 1083, 1086 (4th Cir. 1979). Thus, a complaint may be dismissed as a matter of law only "if it lacks a cognizable legal

theory, or it alleges insufficient facts under a cognizable legal theory." *Mates v. N. Am. Vaccine, Inc.*, 53 F. Supp. 2d 814, 822 (D. Md. 1999).

The court must accept the well-pled material allegations as true, viewing the facts and the reasonable inferences drawn therefrom in the light most favorable to the plaintiff. *Chisolm v. TranSouth Fin. Corp.*, 95 F.3d 331, 334 (4th Cir. 1996). The court, however, is "not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

ANALYSIS

Roberts claims that MDHR employees violated the Full Faith and Credit Clause, the Fourth Amendment prohibition against unlawful seizures, and the Due Process Clause by: (1) sending collection letters to his home; (2) reporting fraudulent collection information to credit bureaus, the Internal Revenue Service, and the Maryland Child Support Enforcement agency; and (3) placing a lien on his federal income tax refund.

The Defendants argue that the Court lacks subject matter jurisdiction over Roberts's claims under the Rooker-Feldman doctrine.

The Rooker-Feldman doctrine holds that "lower courts generally do not have [subject-matter] jurisdiction to review state-court decisions." *Shooting Point, L.L.C. v. Cumming*, 368 F.3d 379, 383 (4th Cir. 2004) (*quoting Safety-Kleen, Inc. v. Wyche*, 274 F.3d 846, 875 (4th Cir. 2001)) (internal quotation marks omitted) (alteration in original).

The Rooker-Feldman doctrine bar extends not only to issues actually decided by the a state court, but also to those that are "inextricably intertwined with questions ruled upon by a state court." *Id.* (*quoting Plyler v. Moore*, 129 F.3d 728, 731 (4th Cir. 1997)) (internal quotation marks omitted). A federal claim is inextricably intertwined with a state court decision if "success on the federal claim depends upon a determination that the state court wrongly decided the issues before it." *Id.* (*quoting Plyler*, 129 F.3d at 731) (internal quotation marks omitted).

In order to find that the MDHR and its employees have violated Roberts's rights, the Court would have to determine that the Maine Child Support Order is invalid. *See* Defs.' Ex. A (Maine Child Support Order). "The Rooker-Feldman bar applies to claims such as this one where, 'in order to grant the federal plaintiff the relief sought, the federal court must determine that the [state] court judgment was erroneously entered or must take action that would render the judgment ineffectual.'" *Am. Reliable Ins. Co. v. Stillwell*, 336 F.3d 311, 317 (4th Cir. 2003) (*quoting Jordahl v. Democratic Party*, 122 F.3d 192, 202 (4th Cir. 1997)) (alteration in original). Accordingly, the Defendants' motion to dismiss for lack of subject matter jurisdiction will be granted.

12/17/2004
Date

/s/
William D. Quarles, Jr.
United States District Judge

APPENDIX H

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
Northern Division -- Baltimore

C.A. No. WDQ-04-2039

[Filed July 1, 2004]

DAVID A. ROBERTS
900 Forked Creek Road
Arnold, MD 21012-1729
Anne Arundel County

Plaintiff

v.

JOHN NICHOLAS, COMMISSIONER
MAINE DEPARTMENT OF HUMAN SERVICES
11 State House Station
35 Anthony Avenue
Augusta, Maine 04333-0011

JOHN NICHOLAS
Individually
11 State House Station
35 Anthony Avenue
Augusta, Maine 04333-0011

PETER WALSH)
Individually and in his official capacity as)
Commissioner of Maine Department)
of Human Services)
11 State House Station)
35 Anthony Avenue)
Augusta, Maine 04333-0011)
)
KEVIN W. CONCANNON)
Individually and in his official)
capacity as Commissioner (former))
of Maine Department of Human Services)
Iowa Department of Human Services,)
Hoover State Office Building)
Des Moines, Iowa 50319)
)
MARK O. VAN VALKENBURGH)
Individually and in his official capacity as)
Agent for the Maine Dept. of Human Services)
11 State House Station)
35 Anthony Avenue)
Augusta, Maine 04333-0011)
)
INGRID B. LAPOINTE)
Individually and in her official capacity as)
Agent for the Maine Dept. of Human Services)
35 Anthony Avenue)
Augusta, Maine 04333-0011)
)
ANNE-MARIE JOHNSON)
Individually and in her official capacity as)
Agent for the Maine Dept. of Human Services)
11 State House Station)
35 Anthony Avenue)
Augusta, Maine 04333-0011)

LORETTA DUMOND)
Individually and in her official capacity as)
Agent for the Maine Dept. of Human Services)
11 State House Station)
35 Anthony Avenue)
Augusta, Maine 04333-0011)
)
Defendants)
_____)

FEDERAL CIVIL RIGHTS CLAIM UNDER THE CIVIL RIGHTS ACT, TITLE 42, UNITED STATES CODE 1983 DEMAND FOR: COMPENSATORY, PUNITIVE & EXEMPLARY DAMAGES AND INJUNCTIVE RELIEF

Comes now, David A. Roberts, by and through his counsel, The Law Office of Gerald Solomon, P.A. and Gerald Solomon, Esq. and says unto this Court:

PARTIES

Plaintiff:

1. Plaintiff David A. Roberts is a citizen of the United States of America and citizen of the State of Maryland.

Defendants:

2. The Maine Dept. of Human Services is an agency of the State of Maine responsible for, among other things, the collection, management and payment of child support.

3. John Nicholas is the current Commissioner and titular head of the Maine Department of Human Services.

4. Peter E. Walsh is the former Acting Commissioner, Maine Department of Human Services for the time periods alleged in this action.

5. Kevin W. Concannon is the former Commissioner, Maine Department of Human Services for the time periods alleged in this action.

6. Mark O. Van Valkenburgh is an agent for the Maine Department of Human Services, Division of Support Enforcement and Recovery.

7. Ingrid B. LaPointe is an agent for the Maine Department of Human Services, Division of Support Enforcement and Recovery.

8. Loretta Dumond is an agent for the Maine Department of Human Services, Division of Support Enforcement and Recovery.

9. Anne-Marie Johnson is an agent for the Maine Department of Human Services, Division of Support Enforcement and Recovery.

10. Plaintiff reserves the right to name additional defendants as may be discovered through the course of this action.

11. Defendants, through their acts and or omissions, have engaged in and continue to engage in a pattern or practice of conduct that has resulted in

plaintiff being denied his civil rights and rights guaranteed to him under federal law.

12. Defendants "under color of law" acted in bad faith by depriving the plaintiff of his property through repeatedly ignoring the Full Faith and Credit Clause of the United States Constitution, repeatedly making statements in pleadings that they knew, or should have known, were false, thereby depriving him of his rights under the Fourth Amendment, the Full Faith and Credit Clause of the United States Constitution, and the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution, and the requirements of the Full Faith and Credit of Child Support Orders Act, 28 USC §1738(B).

JURISDICTION

13. This Court has jurisdiction, pursuant to 28 U.S.C. § 1331 and 42 USC § 1983.

14. This Court is the proper venue in which to hear this action because the substantive violations of Plaintiff's rights committed by the named defendants occurred within the State of Maryland during the periods of time relevant to this cause.

15. The plaintiff is and has been a resident of the State of Maryland for twenty-three consecutive years. All significant acts of civil rights violations against the plaintiff took place within the state of Maryland or were designed to damage the plaintiff within the State of Maryland.

STATEMENT OF THE CASE

OVERVIEW:

16. This is an action for damages and injunctive relief brought under 42 USC 1983. The civil rights violations set forth herein below arise out of the repeated, systemic and wrongful deprivation of plaintiff's civil rights by defendants acting under color of law. Defendant, Maine Department of Human Services was the initiating and moving party to several interstate actions for the modification of child support filed in Maryland against plaintiff David A. Roberts, but refused to give full faith and credit to these final judgments of the courts of the State of Maryland by taking illegal acts in violation of plaintiff's civil rights and fundamental liberty interests, including, but not limited to placing a lien on the plaintiff's income tax without first obtaining either personal jurisdiction or a judgment against the plaintiff, continued harassment and collection efforts after prior attempts were dismissed, with prejudice, attempted enforcement of a prior order that was modified at the request of the defendants, and allowing the false reporting of plaintiff's child support status to credit reporting agencies and various governmental agencies.

FACTUAL ALLEGATIONS COMMON TO ALL DEFENDANTS AND COUNTS

17. Plaintiff David Roberts ("Roberts") was divorced from his former wife, Rosemary H. Petke ("Petke") by judicial decree from the State of Maine dated January 22, 1981, from Aroostook District Court, District No. II, Division of Southern Aroostook.

18. The said judgment of divorce incorporated the terms of a Property Settlement Agreement ("Agreement") entered into by the parties. The Agreement specified property division, child support, child custody, visitation and alimony.

19. At the time of entry of the final Divorce Judgment, in January 22, 1981, the Plaintiff was a bona fide resident and domiciliary of the State of Maine.

20. Subsequent to entry of the final Divorce Judgment, Plaintiff relocated his residence and domicile to his former home state of Maryland.

21. On or about February 23, 1981 Petke applied for government financial assistance by requesting, among other things, aid for dependent children though the defendant Department of Human Services ("DHS"). Upon information and belief, Petke subrogated her rights to seek child support to DHS.

22. On or about March 24, 1982, defendant DHS sought modification of child support, payment of alleged child support arrears, and "such other and further relief as this court deems just and proper, pursuant to the then-governing interstate child support collection and enforcement regime, known as the Uniform Reciprocal Enforcement of Support Act (URESA), Title 19 Maine Revised Statutes Ann., §§331, *et seq*.

23. The Aroostook County Superior Court Clerk's Office, per Julia P. Nelson, Special Deputy Clerk of the Supreme Judicial and Superior Courts,

Houlton, Maine, forwarded to Maryland a certified copy of a Petition dated March 17, 1982, filed in that Court by the defendant Department of Human Services against plaintiff David A. Roberts, along with testimony taken in the State of Maine, a certification from the State of Maine, and a copy of the Maine version of the URESA act.

24. The filing of the aforementioned pleadings was required under URESA in order to give the responding state (in this case Maryland) the authority to modify the Maine order of support.

25. Pursuant to the authority of URESA, also adopted by the State of Maryland, the State of Maine relinquished modification and enforcement jurisdiction to the State of Maryland, to wit:

a. Six months prior to the URESA filing, Petke asked for modification of the Maine order as it related to visitation and other items not related to child support;

b. Plaintiff was under the jurisdiction of the Maine court system at the same time the defendant filed the URESA action.

26. The Circuit Court for Wicomico County, Maryland, acting at the behest of its sister court in Aroostook, Maine, accepted the interstate petition for filing on April 14, 1982, and proceeded to exercise both subject matter jurisdiction and personal jurisdiction to undertake review and modification of the controlling Maine order.

27. On January 7, 1983, the Circuit Court for Wicomico County, Maryland, acted upon the defendant's petition and entered a final order modifying plaintiff's child support obligation by suspending payments until the plaintiff was out of school. Neither party appealed the final order of the Circuit Court for Wicomico County, Maryland.

28. On April 12, 1984, the defendant DHS again initiated a URESA request asking the Circuit Court for Wicomico County to modify the plaintiff's child support obligation. Again, while defendant DHS asked the Maryland court to modify the support order the Maine court had *in personam* jurisdiction over the plaintiff, as Petke asked for further modification of terms of the Maine visitation order by filing a Petition on February 9, 1984.

29. On April 27, 1984 the Circuit Court for Wicomico County, Maryland again entered an Order based upon the request of DHS, setting child support at $180 per month. No appeal of this order was taken.

30. Plaintiff David A. Roberts properly complied with the Orders of the Maryland State Courts and paid all of the child support owed pursuant to the orders of that court of competent jurisdiction. All obligations were paid through the Wicomico County Family Support Division and forwarded to the Maine Department of Human Services, per the January 7, 1983 Order.

31. The Maryland Courts continued to exercise personal and subject matter jurisdiction over the plaintiff through various court actions, including

Motions for Contempt, submission of Earnings Withholding Orders and acting on a Motion to Re-Open the case filed by the defendants on September 16, 1986.

32. To his knowledge, information and belief, plaintiff asserts that no court has ever entered a judgment against him for past due child or spousal support.

33. Upon information and belief, on March 31, 1997 defendant DHS caused a federal tax lien to be placed upon plaintiff's federal taxes. The said lien was filed with the Clerk of the Circuit Court for Dorchester, MD.

34. On March 31, 1997 defendant DHS asserted its position, under the color of state law, that the interstate URESA actions that it initiated and pursued through the Maryland courts had no effect upon the original order for support entered in Maine.

35. On November 20,2000 the defendant DHS, under the color of state law, filed a Uniform Interstate Family Support Act ("UIFSA") action to register, enforce and collect arrearages under the original Maine court order. The action was filed as if it were an **"Initial Request"** and did not properly inform the Maryland court of the procedural history and posture of the case, to the point of not mentioning any of the valid Maryland court orders.

36. The Defendant(s) knew, or should have known, that it could not act under the authority of an order that had been modified or superseded, and at the

very least, should have disclosed to the court the existence of the Maryland court orders obtained through defendant DHS's own efforts.

37. Defendant Valkenburgh executed an affidavit under penalty of perjury that the plaintiff owed $25,790 in past due child support, which he knew or should have known was false and misleading.

38. The States' Attorney for Wicomico County, Maryland, on April 18, 2001, filed a Motion to Dismiss the action with prejudice, claiming that Maryland has an order with the parties and Maryland lad closed its case.

39. The Defendants' complaint was dismissed WITH PREJUDICE (emphasis included in original), per Order of the Circuit Court for Wicomico County, Maryland, entered on May 14, 2001. Neither party appealed the decision.

40. The defendant DHS violated, and continues to violate plaintiff's civil rights under the Fourth Amendment, the Full Faith and Credit Clause of the United States Constitution, and the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution, and the requirements of the Full Faith and Credit of Child Support Orders Act, 28 USC §1738(B), by its continued collection efforts, the filing of the federal tax lien, the filing of an "Initial Request" for child support and continued harassment, including threats of prosecution under the federal non-support act, 18 U.S.C. §228.

41. Defendants have reported false adverse information about plaintiff's alleged arrears to various national credit bureaus.

42. The Defendants' unconscionable actions and conscious disregard for the civil rights of the Plaintiff, his family and others are pursued by the Defendants to falsely and fraudulently obtain U.S. federal financial subsidies and incentives offered to the States for the collection of legitimate child support owed. In setting forth this argument, Plaintiff reserves the right to register his status as a relator under the False Claims Act.

43. Defendants acted with malice and in disregard for the truth, in an attempt to collect money for child support that is not due. The Defendants did not follow the judgments of the court, all which have caused the Plaintiff irreparable harm and significant damages, both putative and other.

44. Plaintiff suffered severe damage to his credit, by false and adverse credit information being submitted to various credit reporting agencies by the Defendant, either in reckless disregard of the truth of such claim, or in knowing, deliberate and malicious disregard of the truth.

45. Plaintiff has suffered severe damage to his credit, by a federal tax lien being placed on his federal income taxes with the U.S. Internal Revenue Service, although the Defendant and its agents knew there was no basis for reporting and requesting such lien, and Defendant either acted in reckless disregard of the

truth of such claim, or in knowing, deliberate and malicious disregard of the Plaintiff's rights.

46. Plaintiff has suffered damages to his privacy, in the form of a barrage of dunning letters from the Defendants, a written threat of arrest and imprisonment, harassment and attempted intimidation on a repeated basis.

FACTUAL ALLEGATIONS SPECIFIC TO DEFENDANT MARK O. VAN VALKENBURGH

47. Plaintiff incorporates, as if fully set forth herein, the allegations contained in paragraphs 1 through 46.

48. Acting under the color of state law and in his capacity as an agent for the Maine Department of Human Services, Child Support Enforcement Division, defendant Van Valkenburgh prepared and mailed various documents intended for the Maryland Child Support Enforcement Office of Central Operations, located in Baltimore, Maryland.

49. Included among the documents prepared and sent to Maryland Child Support Enforcement by defendant Van Valkenburgh as part of the materials accompanying the UIFSA request were the following:

a. A "Child Support Enforcement Transmittal #1 – Initial Request" consisting of two pages, dated to November 20, 2000 and subscribed to by defendant Van Valkenburgh;

b. A "Registration Statement," dated to November 20, 2000, consisting of one page, which was subscribed to by defendant Van Valkenburgh under oath and notarized;

c. A five page document entitled "General Testimony for UIFSA," (hereinafter referred to as "UIFSA accounting statement"), consisting of five pages of calculations of child support arrears arising during the period from February, 1981 through November 17, 2000. Each individual page of purported child support arrears calculations was subscribed separately by defendant Van Valkenburgh under oath and notarized;

d. The "Divorce Judgment" entered in the case of David A. Roberts v. Rosemary H. Roberts, Divorce Action Docket Number 79-80-D- 1147, dated January 22, 1981, from the District Court for the County of Aroostook, Maine, Southern Division, District No. II, including child support and alimony payment provisions; and the ratified and incorporated "Property Settlement Agreement" executed by both parties, and dated to January 22, 1981; and

e. Order of modification, dated July 8, 1982, which was entered in the above case, leaving the amount of support unchanged, but correcting a typographical error to properly designate David A. Roberts as the payor and Rosemary H. Roberts as the support payee.

50. Defendant Van Valkenburgh did not include any other relevant legal pleadings, records or subsequent court orders entered the courts of the State of Maryland where plaintiff and defendants were parties to the proceedings.

51. The verified "Child Support Enforcement Transmittal #1, Initial Request" (hereinafter referred to as "CSE Transmittal request") by which defendant Van Valkenburgh requested interstate child support enforcement action by the Maryland Division of Child Support Enforcement contained several deliberately misleading, reckless, and false assertions of fact, which were nevertheless sworn to by defendant Van Valkenburgh and are set forth herein below:

a. On the first page of the CSE Transmittal request, written in upper case letters, the request is characterized as an "INITIAL REQUEST."

b. On the first page of the CSE Transmittal request, in the "Initiating Jurisdiction" section, the state of Maine is identified as the "State W[ith] Cont[inuing] Excl[usive] J[uris]d[iction]."

c. On the first page, in the second section, labeled as "II. C[ase] S[ummary]," defendant Van Valkenburgh reported the beginning date of the support order as "02/01/1981" and indicated further that the Divorce Judgment entered on January 22, 1981, by the District Court in Aroostook, Maine, was the "Presumed Controlling Order" by checking the

corresponding box next to this entry on the prepared CSE Transmittal request form;

d. On the second page, in the seventh section, labeled as "VII. A[dditional] C[ase] I[nformation]," defendant Van Valkenburgh handwrote that the "$44,130 debt is comprised of $25,790.00 in child support and $18,340.00 in spousal support;"

e. In the five page UIFSA accounting statement prepared by defendant Van Valkenburgh, the monthly amount due for the period from February, 1981 through September, 1988 is calculated in the amount of $360 per month; For the period from October, 1998 through August, 1994 the monthly amount of child support due is calculated in the amount of $240 per month; and for the period from September, 1994 through November, 1996 the monthly amount of child support is calculated in the amount of $120 per month;

f. On each of the eight pages of the UIFSA accounting statements appended to the CSE Transmittal request, defendant Van Valkenburgh represents that the child and spousal support arrears thereon are true and accurate accounts of the arrearage owed by the Defendant/Respondent based on Official Agency/Court Records;

g. On each page of the eight pages of accounting statements, defendant Van Valkenburgh represents under oath that the child and

> spousal support arrears reported by him are the "TOTAL ADJUDICATED AND ACCRUED ARREARS. . ." [emphasis in original]

52. Defendant Van Valkenburgh knew of, or recklessly disregarded, the final judgments of the courts of the State of Maryland modifying the support obligations of plaintiff (to which his own agency, the defendant Maine Dept. of Human Services was the party initiating the actions through repeated interstate referrals).

53. Defendant Van Valkenburgh knew, or should have known, that the amounts he represented as being the "TOTAL[s] ADJUDICATED AND ACCRUED ARREARS " had not been adjudicated by any court in either Maine or Maryland. His sworn assertions that the arrears claimed were the result of adjudication were false and completely without basis in fact or law.

54. Subsequent to the entry of the Order of dismissal with prejudice, entered herein between Maine Dept. of Human Services and David Roberts on May 15, 2001 in the Circuit Court of Wicomico County, Maryland, defendants continued to issue repeated collection notices to Plaintiff, demanding alleged child support arrears.

55. The collection notices issued by defendant Van Valkenburgh, acting under color of law on behalf of defendant Maine Dept. of Human Services, were directed to the plaintiff on at least the following dates subsequent to the Order of dismissal by the Wicomico County Circuit Court: (1) June 18, 2001; (2) July 17, 2001; (3) August 22, 2001; (4) September 18, 2001; (5)

October 18, 2001; (6) November 13, 2001; (7) December 11, 2001 Defendant Van Valkenburgh was then transferred from the case, but subsequently resumed his collection activities with his notices dated as follows: (8) November 22, 2002, (9) December 20, 2002, (10) January 24, 2003, (11) February 21, 2003, (12) March 21, 2003, (1 3) April 18, 2003; and (14) May 23, 2003. Plaintiff David Roberts received the above dated collection letters, which continued to be issued against him, even after he repeatedly made written demands for a halt to the collection activity and repeatedly informed Maine Dept. of Human Services officials (including defendant Van Valkenburgh), of the May 14, 2001 Order of dismissal entered by the Wicomico County Circuit Court.

56. Defendant Van Valkenburgh acted fraudulently or recklessly in total disregard of the controlling Order of dismissal of May 14, 2001, by issuing the fourteen collection notices to plaintiff as referenced above, even though he knew, or should have known, that the claim upon which the notices were predicated had been resolved by a court of competent jurisdiction in a manner favorable to the plaintiff and the claims of defendants had been dismissed with prejudice.

57. Defendant Van Valkenburgh also prepared and mailed an administrative withholding order and notice, dated April 10, 2003, to the Wexford Clearing Services Corporation, at 199 Water Street, New York, New York, demanding wage withholding be instituted against a one "David A. Roberts." Defendant Van Valkenburgh apparently misidentified an employee of Wexford Clearing Services as the plaintiff of the same

name. Simultaneously, defendant Van Valkenburgh mailed a notice of the administrative withholding order to plaintiff David A. Roberts.

58. Plaintiff David A. Roberts has never been employed by Wexford Clearing Services, has never performed any services for that company in any capacity, and has never been a resident of the State of New York.

59. Defendant Van Valkenburgh's repeated collection demands against the Plaintiff were bogus and devoid of factual or legal merit. The repeated collection letters and administrative orders cited above constituted sustained and persistent harassment of the Plaintiff in derogation of his civil rights and liberties by defendant Van Valkenburgh, and by defendant Maine Department of Human Services, acting under color of law.

FACTUAL ALLEGATIONS SPECIFIC TO DEFENDANT SPECIFIC TO DEFENDANT INGRID B. LAPOINTE

60. Plaintiff incorporates, as if fully set forth herein, the allegations contained in paragraphs 1 through 46.

61. At all relevant times cited herein, upon information and belief of the plaintiff, defendant Ingrid B. LaPointe was acting under color of law as an agent for the Division of Support Enforcement and Recovery, which operates under the direct control and supervision of the Maine Department of Human Services.

62. On or about October 4, 2002, defendant LaPointe prepared and mailed a letter addressed to plaintiff "and spouse." The choice of plaintiff's "spouse" as an addressee constituted harassment or reckless conduct by defendant LaPointe, because she knew or should have known that the Plaintiff's spouse had no legal responsibility for any alleged child support arrears, but nonetheless she was attempting to induce payment from the plaintiff's spouse.

63. Defendant LaPointe prepared and sent to the plaintiff by the U.S. mails, the further, following collection notices, by which payment of alleged child support arrears was demanded of the Plaintiff: (1) January 14, 2002; (2) February 12, 2002; (3) March, 12, 2002; (4) April 18, 2002; (5) May 7, 2002; (6) June 21, 2002; (7) July 19, 2002; (8) August 23, 2002; (9) September 20, 2002; and (10) October 18, 2002

64. Defendant LaPointe subsequently has resumed her collection efforts in this matter when she recently prepared and sent to the plaintiff by the U.S. mails, new collection notices demanding payment of alleged child support arrears, dated April 23, 2004 and May 21, 2004.

65. The letters and notices that defendant LaPointe sent to plaintiff, plaintiff's spouse, the Internal Revenue Service. Defendant LaPointe sent letters and notices to the Sheriff of Anne Arundel County, Maryland, requesting that Sheriff of Anne Arundel County, Maryland deliver the letter to plaintiff presumably in an effort to give the impression that the letter had the impact of a court proceeding. Defendant LaPointe's letter contained deliberately

misleading, reckless and false assertions and willful omissions of relevant facts.

66. Defendant LaPointe's fraudulent or reckless misrepresentations and acts of omission were perpetrated under color of law in violation of the plaintiff's civil rights and exceeded the scope of her authority and discretion as an agent of the Maine Department of Child Support Enforcement and Recovery.

FACTUAL ALLEGATIONS SPECIFIC TO DEFENDANT ANNE-MARIE JOHNSON

67. Plaintiff incorporates, as if fully set forth herein, the allegations contained in paragraphs 1 through 46.

68. Defendant Johnson at all times relevant to these pleadings, represented herself as acting in the capacity of an agent for defendant Maine Dept. of Human Services, Child Support Enforcement Division and Recovery.

69. Defendant Johnson prepared and sent to the plaintiff by the U.S. mails, collection notices on the following dates, by which payment of alleged child support arrears was demanded of the Plaintiff: (1) June 20, 2003; (2) July 18, 2003; (3) August 22, 2003; (4) September 19, 2003; (5) October 24, 2003; (6) November 21, 2003; and (7) December 19, 2003

70. The notices that defendant Johnson sent to plaintiff, contained deliberately misleading and false,

or reckless, assertions and willful omissions of relevant facts

71. Defendant Johnson's fraudulent or reckless misrepresentations and acts of omission were perpetrated under color of law in violation of the plaintiff's civil rights and exceeded the scope of her authority and discretion as an agent of the Maine Department of Child Support Enforcement and Recovery.

FACTUAL ALLEGATIONS SPECIFIC TO DEFENDANT LORETTA DUMOND

72. Plaintiff incorporates, as if fully set forth herein, the allegations contained in paragraphs 1 through 46.

73. At all relevant times cited herein, upon information and belief of the plaintiff, defendant Dumond was acting under color of law as an agent for the Division of Support Enforcement and Recovery, which operates under the direct control and supervision of the Maine Department of Human Services.

74. Defendant Dumond prepared and sent to the plaintiff by the U.S. mails, the following collection notices, by which payment of alleged child support arrears was demanded of the Plaintiff: (1) January 23, 2004; (2) February 20, 2004; and (3) March 19, 2004.

75. Defendant Dumond's fraudulent or reckless misrepresentations and acts of omission were perpetrated under color of law in violation of the

plaintiff's civil rights and exceeded the scope of her authority and discretion as an agent of the Maine Department of Child Support Enforcement and Recovery.

FACTUAL ALLEGATIONS SPECIFIC TO DEFENDANT KEVIN W. CONCANNON

76. Plaintiff incorporates, as if fully set forth herein, the allegations contained in paragraphs 1 through 75.

77. At all relevant times cited herein between February, 1995 and February, 2003, upon information and belief of the plaintiff, defendant Concannon was acting as Commissioner of the Maine Department of Human Services. The Division of Support Enforcement and Recovery operates under the direct control and supervision of defendant Concannon in his role as Commissioner of the Maine Department of Human Services.

78. On or about March 31, 1997, defendant Concannon responded to prior correspondence from plaintiff Roberts by personal letter, wherein he acknowledges an "audit" of the plaintiff's child support case had been undertaken and he confirms the "correctness" of the Division of Child Support Enforcement and Recovery's position regarding interstate collection activity, alleged unpaid arrears and other accompanying acts in furtherance of same. He further represents that he was pleased to have had the opportunity to look at plaintiff Roberts' case, in response to plaintiff's written prior complaints and concerns.

79. In view of his audit and review, defendant Concannon knew, or should have known, of prior and concurrent administrative acts and enforcement attempts in apparent violation of law and in contravention of the decisions of the Maryland Court in its exercise of complete jurisdiction.

80. Defendant Concannon asserted that the preceding actions of the Division of Support Enforcement and Recovery to be "in compliance with all applicable law."

81. Defendant Concannon's deliberate or reckless failure to afford full faith and credit to the prior, substantive modification court proceedings by the State of Maryland constituted a deliberate, misleading, false and fraudulent omission, or an egregious and reckless disregard for the truthfulness of the matters asserted in his correspondence to the plaintiff. His written statements of March 31, 1997, wherein he affirms and validates the illegal and extortionate collection tactics and threats employed by his own agency, was a fraudulent or reckless attempt under color of law to buttress his subordinate agency's illegal acts and to coerce payment of child support sums that he knew or should have known were not due and owing by plaintiff.

82. Because defendant Concannon's responsibilities as Commissioner included overall supervision and guidance of the Maine Department of Human Services, including the Maine Division of Support Enforcement and Recovery, until he resigned in January, 2003, his fraudulent or reckless misrepresentations and dereliction of duty gave

sanction, validation and affirmation to similar fraudulent or reckless misrepresentations and acts of omission by others in the Maine Division of Support Enforcement and Recovery.

83. Defendant Concannon's fraudulent or reckless misrepresentations and dereliction of duty, by his grossly negligent and willful failure to properly exercise his supervisory authority, were perpetrated under color of law in violation of the plaintiff's civil rights and exceeded the scope of his authority and discretion as the agency head of the Maine Dept. of Human Services, which is the state agency responsible for the administration and management of the Division of Child Support Enforcement and Recovery.

FACTUAL ALLEGATIONS SPECIFIC TO DEFENDANT PETER WALSH

84. Plaintiff incorporates, as if fully set forth herein, the allegations contained in paragraphs 1 through 75.

85. At all relevant times cited herein between February, 2003 and continuing through February, 2004, upon information and belief of the plaintiff, defendant Walsh was the Acting Commissioner of the Maine Department of Human Services ("Maine DHS"). The Division of Child Support Enforcement and Recovery operated during this period under the direct oversight and supervision of defendant Walsh, through exercise of his authority as Commissioner of the Maine Department of Human Services.

86. By letter of April 7, 2003, plaintiff informed defendant Walsh that the Division of Support Enforcement and Recovery was persisting in its administrative acts and enforcement attempts in apparent violation of law and in contravention of the decisions of the Maryland Court in its exercise of complete jurisdiction.

87. Salient among the various administrative acts taken in apparent furtherance of the collection process of the alleged child support and spousal support debt attributed to the plaintiff during defendant Walsh's tenure, were the collection letters addressed and sent to the plaintiff by the Maine Dept. of Support Enforcement and Recovery agent, defendant Mark Van Valkenburgh, namely those of February 21, 2003, March 21, 2003, April 10, 2003 and April 18, 2003.

88. During defendant Walsh's tenure as Acting Commissioner, the Department of Child Support Enforcement and Recovery reported (or failed to amend or correct) false and fraudulent adverse information to various credit reporting agencies and to the U.S. Internal Revenue Service. As a direct and proximate result, the plaintiff suffered damages to his credit and in the form of a lien against him with the IRS.

89. Plaintiff repeatedly asked defendants to cease and desist their collection efforts and recognize the Maryland Court Orders issued in actions initiated by defendants. These letters were sent to Governor Baldacci on May 5, 2003 and on July 5, 2003. Upon information and belief, the Governor's office contacted

the office of Acting Commissioner Walsh with a request to review the information plaintiff provided.

90. Plaintiff sent a further demand letter to Acting Commissioner Walsh, dated July 21, 2003, by which he reiterated his demand for cessation of collection activity against him. Collection letters continued to be issued and directed unabated against the plaintiff by the Dept. of Child Support Enforcement and Recovery. Plaintiff's further demand letters for a cessation of such activity, including a demand letter issued by plaintiff's attorney were ignored.

91. As the responsible supervisor with oversight responsibility for acts of the Division of Child Support Enforcement and Recovery and its employees, such as defendants Anne-Marie Johnson and Mark Van Valkenburgh, defendant Walsh was charged with knowledge of the defendant agency's own administrative record of the case and of applicable federal and state laws.

92. Defendant Walsh further knew, or should have known by means of repeated correspondence from plaintiff and from his own review of the legal and procedural history and documents of the plaintiff's case, that prior substantive modification proceedings previously had been instigated by the Division of Child Support Enforcement and Recovery and adjudicated in the courts of the State of Maryland and that plaintiff owed no support arrears. Defendant Walsh's grossly negligent and continuing failure to abate the fraudulent collection activities by the Division of Child Support Enforcement and Recovery was in violation of

the plaintiff's civil rights and in gross violation of the standards of due diligence and exercise of normal discretion required in his capacity as Acting Commissioner of the Maine Dept. of Human Services.

FACTUAL ALLEGATIONS SPECIFIC TO DEFENDANT JOHN NICHOLAS

93. Plaintiff incorporates, as if fully set forth herein, the allegations contained in paragraphs 1 through 75.

94. At all relevant times cited herein, between February, 2004, continuing through the present, John Nicholas, was acting as the Commissioner of the Maine Department of Human Services. The Division of Child Support Enforcement and Recovery operates under the direct control and supervision of defendant Nicholas in his supervisory role as Commissioner of the Maine Dept. of Human Services. The defendant Maine Dept. of Human Services is the administrative agency directly charged with supervisory responsibility and oversight of the Maine Division of Child Support Enforcement and Recovery.

95. The defendant Dept. of Human Services acted fraudulently under color of law by pursuing all manner of legal and administrative remedies and sanctions against the plaintiff, as set forth in particular detail above. A fair and adequate review of the legal, procedural and administrative history of this matter by agency Commissioner John Nicholas during his tenure should have resulted in the defendant Maine Dept. of Human Services proceeding in reliance upon the controlling Maryland court orders. Such a

review of the case would have, or should have, resulted in total or substantial abatement of all further administrative and proceedings, or led to substantial changes in the manner in which further actions were undertaken.

96. The complete failure of defendant Nicholas to conduct an adequate review of this case during his tenure as Commissioner for more than twenty years, despite the repeated and detailed notices from the plaintiff and the availability of the agency record, constitutes gross dereliction of the standards of due diligence and exercise of normal discretion required in his capacity as Commissioner of the Maine Dept. of Human Services.

97. Defendant Nicholas' failure to cease the ongoing collection activities against the plaintiff and to redress or mitigate the injuries and damages suffered by the plaintiff constitutes an ongoing violation of the plaintiff's civil rights and fundamental liberty interests under the United States Constitution and other federal and state law.

COUNT I
CLAIM AGAINST MAINE DEPARTMENT OF HUMAN SERVICES, ET. AL
(Full Faith and Credit Clause)

98. Plaintiff incorporates as if fully set forth herein, the allegations contained in paragraphs 1 through 97.

99. Defendant Dept. of Human Services and the seven individual defendants named above, acting

under color of any statute, ordinance, regulation, custom, and usage of U.S. Federal or State Law, subjected the Plaintiff to the deprivation of his rights, privileges and immunities of the Constitution and laws of the United States, to wit:

a. Defendant deprived plaintiff of his rights under the Full Faith and Credit provision of the United States Constitution and under the Full Faith and Credit for Child Support Orders Act, 28 USC 1738(B), by taking deliberate actions contrary to the final court orders of the State of Maryland, to which Defendant was a party plaintiff;

COUNT II
CLAIM AGAINST MAINE DEPARTMENT OF HUMAN SERVICES, ET. AL
(Fourth Amendment Unlawful Seizure)

100. Plaintiff incorporates, as if fully set forth herein, the allegations contained in paragraphs 1 through 97.

101. Defendant Department of Human Services, and the seven individual defendants named above, acting under color of any statute, ordinance, regulation, custom, and usage of U. S. Federal or State Law, subjected the plaintiff to the deprivation of his rights, privileges and immunities of the Constitution and laws of the United States, to wit

a. Defendant engaged in unlawful seizures and attempted seizures, in violation of the Fourth Amendment to the United States Constitution,

by depriving plaintiff of specific property rights and encumbering his personal property, and more specifically, by placing unlawful restraints on the plaintiff's right to own and enjoy his private property free from governmental interference, including placing a lien on the plaintiff's federal income tax refund and adversely affecting plaintiff's credit and enjoyment of his property by supplying false information to credit reporting agencies;

COUNT III
CLAIM AGAINST MAINE DEPARTMENT OF HUMAN SERVICES, ET. AL
(Due Process Violations)

102. Plaintiff incorporates, as if fully set forth herein, the allegations contained in paragraphs 1 through 97.

103. Defendant Dept. of Human Services and the seven individual defendants named above, acting under color of any statute, ordinance, regulation, custom, and usage of U. S. Federal or State Law, subjected the Plaintiff to the deprivation of his rights, privileges and immunities of the Constitution and laws of the United States, to wit:

a. Defendant deprived plaintiff of his rights to due process arising under the fifth and fourteenth amendments to the United States Constitution by claiming, attempting to claim, and asserting a monetary judgment against plaintiff in actions outside of the territorial borders of the State of Maine, when the action in which defendant

claimed said judgment was not rendered in a court that had personal jurisdiction over plaintiff;

COUNT IV
CLAIM AGAINST MAINE DEPARTMENT OF HUMAN SERVICES, ET. AL
(Attachment Before Judgment)

104. Plaintiff incorporates, as if fully set forth herein, the allegations contained in paragraphs 1 through 97.

105. Defendant Department of Human Services and the seven individual defendants named above, acting under color of statute, ordinance, regulation, custom, and usage of U.S. Federal or State Law, subjected the Plaintiff to the deprivation of his rights, privileges and immunities of the Constitution and laws of the United States, to wit:

a. Defendant deprived plaintiff of his rights to the full use and enjoyment of his property, free from attachment and legal encumbrance prior to judgment

WHEREFORE, upon the premises considered, your Plaintiff prays that this Court:

A. Enter judgment against defendants, jointly and severally, in the amount of $50,000 in compensatory damages;

B. Enter judgment against defendants, jointly and severally, in the amount of $2,500,000 as and for punitive damages;

C. Award him counsel fees and costs incurred in pursuing this action;

D. Enjoin the defendants from further pursuit of any collection action against him;

E. Grant to him both immediate temporary and permanent injunctive relief against the defendants from federal tax liens and other encumbrances upon his property arising out of the subject matter of this cause; and

F. For such other and further relief as the nature of his cause may require.

Respectfully submitted,

The Law Office of Gerald Solomon, P.A.

/s/

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APPENDIX I

CONSTITUTIONAL AND STATUTORY PROVISIONS

UNITED STATES CONSTITUTION

The Full Faith and Credit clause of United States Constitution, Article IV, Section 1:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

FEDERAL STATUTES

State and Territorial statutes and judicial proceedings; full faith and credit, 28 U.S.C. § 1738:

> "The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> The records and judicial proceedings of any court of any such State, Territory or Possession,

or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

The Full Faith and Credit of Child Support Orders Act, 28 U.S.C. § 1738B:

"**(a) General rule.**--The appropriate authorities of each State--

(1) shall enforce according to its terms a child support order made consistently with this section by a court of another State; and
(2) shall not seek or make a modification of such an order except in accordance with subsections (e), (f), and (i).

(b) Definitions.--In this section:
"child" means--

(A) a person under 18 years of age; and
(B) a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a State.

"child's State" means the State in which a child resides.

"child's home State" means the State in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.

"child support" means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

"child support order"--

(A) means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and

(B) includes--

(i) a permanent or temporary order; and

(ii) an initial order or a modification of an order.

"contestant" means--

(A) a person (including a parent) who--

(i) claims a right to receive child support;

(ii) is a party to a proceeding that may result in the issuance of a child support order; or

(iii) is under a child support order; and

(B) a State or political subdivision of a State to which the right to obtain child support has been assigned.

"court" means a court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order.

"modification" means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in section 1151 of title 18).

(c) Requirements of child support orders.--A child support order made by a court of a State is made consistently with this section if--

(1) a court that makes the order, pursuant to the laws of the State in which the court is located and subsections (e), (f), and (g)--

(A) has subject matter jurisdiction to hear the matter and enter such an order; and

(B) has personal jurisdiction over the contestants; and

(2) reasonable notice and opportunity to be heard is given to the contestants.

(d) Continuing jurisdiction.--A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the residence of any

individual contestant unless the court of another State, acting in accordance with subsections (e) and (f), has made a modification of the order.

(e) Authority to modify orders.--A court of a State may modify a child support order issued by a court of another State if--

(1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and

(2)(A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any individual contestant; or

(B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order.

(f) Recognition of child support orders.--If 1 or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:

(1) If only 1 court has issued a child support order, the order of that court must be recognized.

(2) If 2 or more courts have issued child support orders for the same obligor and

child, and only 1 of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.

(3) If 2 or more courts have issued child support orders for the same obligor and child, and more than 1 of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home State of the child must be recognized, but if an order has not been issued in the current home State of the child, the order most recently issued must be recognized.

(4) If 2 or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized.

(5) The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under subsection (d).

(g) Enforcement of modified orders.--A court of a State that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under subsections (e) and (f).

(h) Choice of law.--

(1) In general.--In a proceeding to establish, modify, or enforce a child support order, the forum State's law shall apply except as provided in paragraphs (2) and (3).

(2) Law of State of issuance of order.--In interpreting a child support order including the duration of current payments and other obligations of support, a court shall apply the law of the State of the court that issued the order.

(3) Period of limitation.--In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provides the longer period of limitation.

(i) Registration for modification.--If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification.

STATE LAWS ADOPTED FROM THE UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT (URESA), AS AMENDED IN 1968

Maryland Statute

Md. FAMILY LAW Code Ann. § 10-328 (1984)

"An order of support issued by a court of this State when acting as a responding state does not supersede any other."

Maine Statute

19 M.R.S.A. § 409 (1981)

"A support order made by a court in this State pursuant to this Act does not nullify and is not nullified by a support order made by a court in this State pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar Act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of the State."